114-663

TRANSCRIPT OF RECORD.

Supreme Court of the United States.

No. ~~338~~. ~~326~~ 57

CALVIN AMORY STEVENS AND JOHN T. TERRY,

Appellants,

vs.

THE WINCHESTER AND ALABAMA RAILWAY COMPANY, AND THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

Filed October 8, 1881.

UNITED STATES SUPREME COURT.

No.

CALVIN AMORY STEVENS and JOHN T. TERRY, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Winchester and Alabama Railroad Company,

vs.

THE WINCHESTER & ALABAMA RAILROAD COMPANY. and THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY,

TRANSCRIPT OF RECORD.

Appeal from the Circuit Court of the United States, Sixth Judicial Circuit, Middle District of Tennessee.

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Robert Clarke & Co., Printers, Cincinnati. [Jan., 1879

United States Circuit Court.

Sixth Judicial Circuit, Middle District of Tennessee.

IN EQUITY.

Calvin Amory Stevens, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the Winchester and Alabama Railroad Company,

versus

The Winchester and Alabama Railroad Company et al.

BILL FOR RELIEF.

E. L. ANDREWS and
GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

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Solicitors, and of Counsel for Complainant.

United States Circuit Court,

Sixth Judicial Circuit, Middle District of Tennessee.

IN EQUITY.

To the Honorable, the Judges of the Circuit Court of the United States for the Sixth Judicial Circuit and Middle District of Tennessee.

Your orator, Calvin Amory Stevens, who is a citizen of the State of New York, brings this, his bill of complaint, against the Winchester and Alabama Railroad Company, and the Nashville, Chattanooga and St. Louis Railroad Company, which are citizens of the State of Tennessee, and are corporations organized, existing, and transacting business in said State by virtue of, and under, an act of the General Assembly of said State.

And thereupon your orator, complaining, shows unto your Honors that he brings this bill of complaint, as well on behalf of all other holders of the Internal Improvement bonds issued by the State of Tennessee to the Winchester and Alabama Railroad Company, who may join in the prosecution of this suit and contribute to the expenses thereof, as on his own behalf as a holder of said bonds.

Your orator shows that the Winchester and Alabama Railroad Company is a body, politic and corporate, chartered by acts of the General Assembly of the State of Tennessee. The object and purpose of the creation of said corporation, was the construction, completion, and thereafter the operation and management of a line of railway for the transportation of passengers and freight from the city of Deckerd, in the State of Tennessee, through the territory of the State of Tennessee, to the town of Fayetteville.

For this purpose powers were granted to said corporation, as are declared in the several charters and acts of incorporation. The said corporation was authorized to borrow money for the purpose of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for, and insure the payment of its liabilities.

Your orator makes part of this, his bill of complaint the said several charters and acts, with their several amendments, passed by the legislature of Tennessee, and attaches copies thereof, marked Exhibit A.

Your orator shows that the General Assembly of the State of Tennessee, by an act, passed the 11th of February, in the year 1852, determined to lend to the railroad companies within said state, and specified in said act, the aid of its credit, for the completion of their several lines of railway.

The plan of that legislation was that each railroad company should procure a certain amount of *bona fide* subscriptions for its capital stock, and that it should have graded, bridged, and ready for the reception of rails, a certain number of miles of its road. By means of these preliminary requirements, assurance was obtained that each railroad company would be competent to fulfill the obligations it was to incur under the statute hereinafter set forth. The period of four years was allowed for the completion of each section of a road, the first section being required to

be thirty, and the others twenty miles in length. The act proceeds to authorize and give validity to bonds of the State, which the governor was required to issue to each company. The amounts of the bonds were to be ascertained by the length of each railroad within the State, and the proceeds of the bonds were to be exclusively applied to the payment of the railroad iron, and equipments of the road to which they were issued. The president of each railroad company, assisted by a commissioner appointed by the governor, was to negotiate the sale of the bonds issued to his company. The act was made a public law for all purposes of notice, and a system of numbering was adopted for distinguishing each bond, and identifying the company to which it was issued. The tenor of the act which gave existence to the bonds, was, that each company became liable upon, and bound to perform, the obligations contained in, and represented by, the bonds loaned to it. Each company was to pay, from its own means, the interest upon the bonds loaned to it, as the same matured from time to time, and also to pay and discharge the principal debt, as it was expressed upon said bonds, when the same matured.

Your orator shows that the sale of the said bonds was to be the means of raising the money requisite for completing the superstructure, laying the rails, and providing the equipment of the roads. The bonds loaned to each company were to be payable in such places in the United States as its president might designate. In order to insure the said sale, and make a market for said bonds, and to create confidence in the public, and on the part of persons to whom said bonds might be offered for sale, and who might become the purchasers of the same, that each company would punctually pay the principal and interest of the bonds loaned to it, or, in case of its failure, that ample security should be provided therefor, which might be easily realized, it was provided by the statute, that "so soon as the bonds of the State shall have been issued for the first section of the road, they shall constitute a lien upon said section,

without a deed from the company," and the "State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien or mortgage, without a deed from the company for the payment by said company of said bonds, with the interest thereon, as the same becomes due, and with a like mortgage or lien, without a deed from the company, upon the additional sections, and upon the entire road, including the stock, for the payment of all the bonds issued to the company, and for the interest accruing thereon." This statutory lien was to be operative at once, and without conveyance or assurance of any kind from the corporations, and was to be superior to all other liens, upon the entire road and property of any corporation so receiving such public assistance, in the State of Tennessee. The statute was to be a substitute for a mortgage executed by each railroad company, for the purposes named in the act.

By the terms of an act of the same session provision was made for a public and official record of the issues of bonds to the several roads. The Comptroller of the State was required to sign and number the coupons of the bonds issued to each railroad, and the Secretary of State was required to number and countersign the bonds; and upon delivering bonds to the several companies, the Secretary of State was required to take a receipt, reciting the number, date, and amount of the bonds so delivered. These receipts were to be taken in a well-bound book, to be deposited in the office of the Secretary of State.

The General Improvement law, above referred to, is herewith set out fully and at length, to wit:

AN ACT to Establish a System of Internal Improvements in this State.

SECTION I. *Be it enacted by the General Assembly of the State of Tennessee*, That whenever the East Tennessee and Virginia Railroad Company shall

have procured *bona fide* subscriptions for the capital stock in said company to an amount sufficient to grade, bridge, and prepare for the iron rails the whole extent of the main trunk line proposed to be constructed by said company, and it shall be shown by said company to the Governor of the State that said subscriptions are good and solvent, and whenever said company shall have graded, bridged, and shall have ready to put down the necessary timbers for the reception of rails, and fully prepared a section of thirty miles of said road at either terminus, in a good and substantial manner, with good materials, for putting on the iron rails and equipments, and the Governor shall be notified of these facts, and that section, or any part thereof, is not subject to any lien whatever, other than those created in favor of the State by the acts of 1851–2, by the written affidavit of the Chief Engineers and President of said company, together with the written affidavit of a competent engineer by him appointed, at the cost of the company, to examine said section, then said Governor shall issue *to said company* coupon bonds of the State of Tennessee, to an amount not exceeding eight thousand dollars per mile on said section, and on no other condition, *which bonds shall be payable at such place in the United States as the President of the Company may designate*, bearing an interest of six per centum per annum, payable semi-annually, and not having more than forty nor less than thirty years to mature.

SEC. 2. *Be it enacted*, That the bonds before specified shall not be used by said company for any other purpose than for procuring the iron rails, chairs, spikes, and equipments for said section of said road, and for putting down said iron rails, and the Governor shall not issue the same unless upon the affidavit of said President, and a resolution of a majority of the Board of Directors, for the time being, that said bonds shall not be used for any other purpose than for procuring the said iron rails, chairs, spikes, and equipments for said section, and for putting down said iron rails, and the Governor shall have power to appoint a commissioner to act under oath, in conjunction with said President, in nego tiating said bonds for the purposes aforesaid, and to

act in any other matters pertaining to said company, where the interest of the State, in the opinion of the Governor, may require it.

SEC. 3. *Be it enacted, That so soon as the* BONDS *of the State shall have been issued for the first section of the road as aforesaid,* THEY *shall constitute a lien upon said section so prepared as aforesaid,* including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes, and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same shall be *invested* with *said* lien or mortgage without a deed from the company, *for the payment by said company of said bonds,* with the interest thereon as the same becomes due.

SEC. 4. *Be it enacted,* That when said company shall have prepared as aforesaid a second section, or any additional number of sections, of twenty miles each of said road, connecting with a section already completed for the iron rails, chairs, spikes, and equipments, as provided in the first section of this act, and the Governor shall be notified of the facts as before provided, he shall, in like manner, issue to said company like bonds of the State of Tennessee, to an equal amount with that before issued under the first section of the act for each and every section, of twenty miles of said road so prepared as aforesaid, but upon the terms and conditions hereinbefore provided, and upon the issuance of the said bonds, the State of Tennessee shall be *invested* with *a like mortgage or lien* without a deed from said company, upon said stock, and upon *said first and additional section or sections* of said road so prepared, upon the rails and equipments put, or to be put, upon the same, *for the payment of said bonds and the accruing interest thereon.* Provided, that if the last section of said road shall be less than twenty miles, or if the railroad proposed to be constructed by any company hereinafter specified, shall be less than thirty miles in extent, bonds of the State shall be issued for such section, or such railroad, as may be less than thirty miles in extent for an amount in proportion to the distance, as provided in this act, but upon the same terms and conditions in all respects, as required in

regard to the bonds to be issued for the other sections of said road. And when the whole of said road shall be completed the State of Tennessee shall be *invested with a lien, without a deed from the company*, upon the entire road, including the stock, right of way, grading, bridging, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business; and all depots, and depot stations, *for the payment of all of said bonds issued to the company* as provided in this act, and for the interest accruing on said bonds. And after the Governor shall have issued bonds for the first section of the road, it shall not be lawful for the said company to give, create, or convey to any person or persons, or body corporate whatever, any lien, incumbrance, or mortgage of any kind which shall have priority over, or come in conflict with, the lien of the State herein secured; and any such lien, incumbrance, or mortgage shall be null and void as against said lien or mortgage of the State, which shall have priority over all other claims existing or to exist against said company.

SEC. 5. *Be it enacted, That it shall be the duty of said company to deposit in the Bank of Tennessee, at Nashville, at least fifteen days before the interest becomes due from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange or necessary commissions*, or SATISFACTORY EVIDENCE THAT SAID INTEREST HAS BEEN PAID OR PROVIDED FOR, and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the Comptroller to report that effect to the Governor, and the Governor shall immediately appoint some suitable person or persons, at the expense of the company, to take possession and control of said railroad, and all the assets thereof, and manage the same and receive the rents, issues, profits, and dividends thereof, whose duty it shall be to give bond and security to the State of Tennessee, in such penalty as the Governor may require, for the faithful discharge of his or their duty as receiver or receivers, to receive said rents, issues, profits, and dividends, *and pay over the same, under the direction of the Governor, toward the liquida-*

tion of such unpaid interest. And if said company fail or refuse to deliver up said road to the person or persons so appointed by the Governor, the person so appointed shall report that fact to the Governor, who shall forthwith issue his warrant, directed to the Sheriffs of the counties through which the road shall run, commanding them to take possession of said road, fixtures, and equipments, and everything pertaining thereto, and place the said receiver in full and complete possession of the same, and said receiver so appointed shall continue in the possession of said road, fixtures, and equipments, and run the same, and manage the entire road, until a sufficient sum shall be realized, exclusive of the costs and expenses incident to said proceedings, *to pay off and discharge the interest as aforesaid, due on said bonds,* which being done, the receiver shall surrender said road and fixtures and equipments to said company. The comptroller shall from time to time settle the accounts with the receiver, and the balance shall be deposited in the treasury of the State. The comptroller is authorized, and it is made his duty, upon his warrant to draw from the treasury any sum of money necessary to meet the interest on such bonds, *as may not be provided for by the company, as provided for in this act,* and the comptroller shall report thereof to the general assembly from time to time.

SEC. 6. *Be it enacted, That if said company shall fail or refuse to pay any of said bonds when they fall due,* it shall be the duty of the Governor to notify the Attorney-General of the district in which is situated the place of business of said company of the fact; and thereupon, said Attorney-General shall forthwith file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by the Court, *to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee, against any loss on account of the issuance of said bonds,* by ordering the said railroad to be placed in the hands of a receiver; ordering the sale of said road, and all the property and assets attached thereto

or belonging to said company, or in such other manner as the Court may deem best for the interest of the State.

SEC. 7. *Be it enacted*, That at the end of five years after the completion of said road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, *and as between the State and said company, the bonds so paid in shall be a credit on the bonds issued to the company; and bonds so paid in, and the interest accruing thereon, from time to time, shall be held and used by the State as a sinking fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be directed as aforesaid*, AND CANCELED. And should said company fail to comply with the provisions of this section, it shall be proceeded against, *as provided in the 5th section of this act.*

SEC. 8. *Be it enacted*, That the President of the company shall make semi-annual reports, under oath, to the Governor, until the completion of said road, setting forth fully the condition of the road and the company, and after its completion he shall report to the Governor annually, showing the financial condition of the company, giving a statement of the trade and travel upon the road, the receipts and expenditures, net earnings, and dividends, and what per cent. is paid on the stock to the stockholders. And said reports shall be consolidated every two years by the President of said company, and said consolidated reports shall be laid before the Governor by the first of September, every two years after the completion of the road, and the Governor shall lay said report before the Legislature for its action, at the next meeting thereof, after said report is made.

SEC. 9. *Be it enacted*, That it shall not be lawful for any officer of said company to engage in any speculation or dealing, directly or indirectly, in any real estate on or along the line, at any of the de-

pots or depot stations, or at either terminus of said road, until after the road is completed, and every officer of the company, before entering upon the duties of his office, shall take an oath in writing, before any judge or justice of the peace in this State, that he will not knowingly violate the provisions of this act, and that he will faithfully perform the duties of his office; and if any such officer of the company, or other person taking an oath as herein provided, knowingly swear falsely, he shall be deemed guilty of perjury, and subject to all the pains and penalties thereof, and every affidavit required under this act may be sworn to before any judge or justice of the peace in this State.

SEC. 10. *Be it enacted*, That the provisions of this act shall extend to and embrace the Chattanooga, Harrison, Georgetown, and Charlestown Railroad Company, the Nashville and Northwestern Railroad Company, the Louisville and Nashville Railroad Company, the Southwestern Railroad, the McMinnville and Manchester Railroad Company, the Memphis and Charleston Railroad Company, the Nashville and Southern Railroad Company, the Mobile and Ohio Railroad Company, the Nashville and Memphis Railroad Company, the Nashville and Cincinnati Railroad Company, the East Tennessee and Georgia Railroad Company, the Memphis, Clarksville, and Louisville Railroad Company, and the Winchester and Alabama Railroad Company, so far as the main trunk roads to be constructed by said companies lie within the limits of this State, and not otherwise, and said companies shall have all the powers and privileges and be subject to all the restrictions and liabilities contained in this act.

SEC. 11. *Be it enacted*, That the gauge of all of said railroads (unless connecting with roads in other States of a different gauge) shall be the same as that of the Nashville and Chattanooga Railroad, and not otherwise, and the iron rails to be put upon said road shall not be less than eighty tons to the mile, if the U rail is used, and not less than one hundred tons to the mile if the T rail is used.

SEC. 12. *Be it enacted, That the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed neces-*

sary to protect the interest of the State, and to secure the State against any loss IN CONSEQUENCE OF THE ISSUANCE OF BONDS UNDER THE PROVISIONS OF THIS ACT. BUT IN SUCH MANNER AS NOT TO IMPAIR THE VESTED RIGHTS OF THE STOCKHOLDERS OF THE COMPANIES.

SEC. 13. *Be it enacted*, That it shall be the duty of the Governor, from time to time, when there shall be reliable information given to him that any railroad company shall have fraudulently obtained the issuance of bonds of this State, or shall have obtained any of said bonds contrary to the provisions of this act, he shall notify the Attorney-General of this State, whose duty it shall be forthwith to institute, in the name of the State, a suit in the Circuit or Chancery Court of the county of the place of business of the company, setting forth the facts; and when the fact shall satisfactorily appear to the Court, that any of said bonds shall have been fraudulently obtained, or obtained contrary to the true intent, meaning, and provisions of this act, then, and in such case, the Court shall order, adjudge, and decree, that said road lying in the State, with all the property and assets of said company, or a sufficiency thereof, shall be sold, and the proceeds shall be paid into the treasury, *and it shall be the duty of the comptroller immediately to vest the same in stocks, creating a sinking fund, as provided for in the 7th section of this act;* and said company shall forfeit all rights and privileges under the provisions of this act, and the stockholders thereof shall be individually liable *for the payment of the bonds so fraudulently obtained* by such company, and for all other losses that may fall upon the State in consequence of the commission of any other fraud by such company, excepting such stockholders as may show to the said Court that they were ignorant of or opposed to the perpetration of such frauds by the company.

SEC. 14. *Be it enacted*, That in the event any of the roads, fixtures, or property belonging to any of said roads shall be sold under the provisions of this act, it shall be the duty of the Governor to appoint an agent for the State, who shall attend said sale and protect the interest of the State, and shall, if necessary to protect said interest, buy in said road or property, in the name of the State; and in case said

agent shall purchase said road for the State, *the Governor shall appoint a receiver, who shall take possession of said road and property, and use the same as provided for in the 5th section of this act*, and said receiver shall settle with the comptroller semi-annually until the next meeting of the General Assembly.

SEC. 15. *Be it enacted, That this act shall be deemed and taken to be a public act as to all purposes of notice: Provided*, That should any of the companies hereinbefore enumerated have, *bona fide*, and before the passage of this act, purchased or otherwise contracted for, upon their own credit, the necessary iron, rails, spikes, equipments, for the road or roads, or any section or sections thereof, the bonds of the State shall be issued to such company or companies, as hereinbefore prescribed.

SEC. 16. *Be it enacted*, That the railroad companies specified in this act, and all other railroad companies hereafter incorporated in this State, shall have power to construct their roads so as to cross each other, if necessary, by the main trunks or branches, or to unite with each other, or with the branches thereof; and it shall be the duty of said companies, when required, to receive on their roads and branches, the full loaded freight cars from each other and the branches thereof, and transport the same to their destination, and return them, without charging for the transportation of the goods, wares, merchandise, and produce therein, any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars. *Provided*, that said companies shall not be compelled to receive such cars on their roads, unless they are constructed with the same gauge, and are of equal strength with their own cars, of which the principal engineer of the road of which it is proposed to require said cars to be transported shall be the judge. *Provided*, that the bonds of the State, proposed to be issued to the Memphis and Charleston Railroad Company under the provisions of this act, shall, in event of their issuance to said company, be divided between the main trunk line, proposed to be constructed by said company, and the branch thereof, from the town of Moscow to the town of Sommerville, in the county of Fayette, according to the respective lengths of

said main trunk line and said branch; and the lien of the State, as herein secured, shall continue upon said main line, and also upon said branch, until said bonds and interest are paid, as heretofore provided.

SEC. 17. *Be it enacted*, That in all cases where bonds may be issued to any of said companies, as provided in this act, the State of Tennessee shall be entitled to two directors in each company, to be appointed by the Governor of the State, to which bonds may be issued.

SEC. 18. *Be it enacted*, That when the Nashville and Chattanooga Railroad Company shall have completed twenty-five miles of their road, in addition to the eighty miles specified in the second section of the act, passed the 4th of February, 1848, chapter 169, then the Governor of the State shall indorse and guarantee, in the name and on behalf of the State of Tennessee, the bonds of said company to the amount of one hundred and seventy-five thousand dollars, and in like manner, when another section of twenty-five miles of said road shall have been completed, the Governor of the State, in the name and on behalf of the State, shall indorse and guarantee the bonds of said company to the additional amount of one hundred and seventy-five thousand dollars, and said bonds are to be indorsed and guaranteed in the same manner, and the same indemnity is to be furnished by said company for the protection of the State, and the like lien is to be given, and the same character of bonds are to be indorsed and guaranteed, as provided in the said act of the 4th of February, 1848.

SEC. 19. *Be it enacted*, That the aid contemplated by the first section of this act, shall only be extended to one of the roads chartered under the names of the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company. *Provided*, That the first of said roads which shall secure the subscription of the capital stock, for the construction of the same, shall be entitled to such aid. *Provided further*, If the Nashville and Southern Railroad Company first obtained the stock in their railroad, as provided in the first section of this act, and shall construct their road to the Tennessee river, to the Mississippi State line, or to a point between the

Tennessee river and the Mississippi State line, then the Tennessee and Alabama Railroad Company may construct their road from the Alabama State line to intersect with the Nashville and Southern Railroad, at such point as said company may select, and the provisions of this act shall extend to the Tennessee and Alabama Railroad, from said Alabama State line to said point of intersection. But if the Tennessee and Alabama Railroad Company first obtain the stock in their railroad, as provided in the first section of this act, and construct their road to the Alabama line, in the direction of Florence, then the Nashville and Southern Railroad Company may construct their railroad from the Tennessee river, the Mississippi State line, or any point between the Tennessee river and the Mississippi State line, so as to intersect the Tennessee and Alabama Railroad, at such point as the company may select, and the provisions of this act shall extend to said railroad from said point of intersection to the Tennessee river, the Mississippi State line, or to any point between the Tennessee river, and the Mississippi State line. And the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company, shall have power to unite or consolidate their stock if they deem it advisable, and upon such terms as the companies may agree upon. *Provided also*, that if the Memphis and Nashville Railroad Company shall not comply with the requirements of this act, and complete thirty miles of their road within four years; or if the Nashville and Northwestern Railroad Company shall, in like manner, fail to complete thirty miles of their road within four years, then the Tennessee Central Railroad Company shall have all the rights, powers, privileges, and benefits intended to be given by this act, to those companies respectively, under the same restrictions and limitations; but the said Tennessee Central Railroad Company shall be allowed two years longer time, in which to prepare thirty miles of their road-bed for the reception of the iron rails, and may then receive the aid of the State, in the issuance of bonds for their benefit, as prescribed in this act. *Provided*, That this provision shall not preclude any subsequent legislature from extending the time of four

years, in which to complete any section of thirty miles of said Nashville and Memphis, or Nashville and Northwestern Railroad. *That each of said companies is hereby authorized and required to appoint an agent or agents to whom the bonds shall be delivered, and whose duty it shall be to control said bonds, and see that they are exclusively applied to the payment of the railroad iron and equipments, as provided for in this act, and for no other purpose whatever.* And the said agent, before he receives the bonds of the State, shall give bond and security, to be approved by the Governor and payable to the State of Tennessee, for the application of the bonds, or the proceeds thereof, to the purposes aforesaid. *Provided*, That before any bonds, under the provisions of this act, shall be issued to any agent of any railroad contemplated by this act, the president of any such company shall first deposit in the office of the Secretary of State, a full, true, and accurate list of all the stockholders, with the sums subscribed by each and every stockholder.

SEC. 20. *Be it enacted*, That no road embraced in this act shall be entitled to State aid unless it shall, *within four years*, complete at least one section of thirty miles, or the whole length of the road, if less than thirty miles long.

Those portions of the act of February 21st, 1852, providing for identification of the bonds, by means of public records, are as follows :

SEC. 7. *Be it further enacted*, That the different Internal Improvement Companies, to whom the bonds of the State may be loaned under the different acts of the present Legislature, shall pay the expenses of engraving and preparing the same.

SEC. 8. *Be it enacted*, That the Governor of the State shall cause to be engraved and printed, the bonds which may be issued under the acts of the present General Assembly, as a loan made to Internal Improvement Companies, and the said bonds shall bear date on the first day of January prior to their issuance, and the coupons thereto shall be payable on the first days of January and July of each year.

SEC. 9. *Be it enacted, That the coupons shall be signed and numbered by the comptroller, and the bonds shall be countersigned, sealed, and numbered by the Secretary of State, and upon delivering said bonds to the company authorized to receive the same, the Secretary of State shall take a receipt, reciting the number, date, and amount of said bonds,* in a well-bound book to be deposited in his office, and the Comptroller and Secretary of State shall each be entitled to receive twenty-five cents for each bond so prepared, to be paid by the party receiving the said bond.

Your orator shows that the State of Tennessee, by act of its General Assembly, passed on the 8th of February, 1854, increased the amount of bonds to be issued to the several "internal improvement companies from $8,000 to $10,000 per mile," and provision was made for an issue of similar bonds to be used for bridge purposes. The said act was amendatory of the act passed 11th of February, 1852, "to establish a system of internal improvement in this State," and required that the increased amount of bonds should be received, "upon the terms and conditions mentioned in the act, which this was intended to amend." By the act of February 17, 1854, the length of the sections which it was necessary for the railroads to complete before obtaining bonds of the State, was decreased from twenty to ten miles, after the completion of the first section of thirty miles. By the act of January 19, 1855, the foregoing act was amended so that the grading only of ten-mile sections was required, in lieu of the completion of said sections, as a preliminary to obtaining the issuance of bonds. The act of October 29, 1855, was amendatory of the bridge law, above mentioned.

Your orator attaches hereto copies of said acts above referred to, marked Exhibit B, and makes them a part of his bill of complaint.

Your orator shows that there was delivered on account of the Winchester and Alabama Railroad, and to the company of that name, internal improvement bonds of the State of Tennessee, being of the numbers, dates, and in the amounts hereinafter set forth:

7,081 to 7,087, White, B, 7	$7,000
6,674 to 6,680, White, B, 7	7,000
7,431 to 7,580, White, B, 150	150,000
8,325 to 8,326, White, B, 2	2,000
8,327 to 8,337, White, B, 11	11,000
8,338 to 8,342, White, B, 5	5,000
8,366 to 8,367, White, B, 2	2,000
8,398 to 8,490, White, B, 93	93,000
8,976 to 9,111, White, B, 136	136,000
10,774 to 10,793, White, B, 20	20,000
3,460 to 3,709, Green, no letter, 250	250,000
3,996 to 4,117, Green, no letter, 122	122,000
7,551 to 7,700, Green, no letter, 150	150,000
8,513 to 8,546, Green, no letter, 34	34,000
1,761 to 2,060, Green, B	300,000
	$1,289,000

A copy of one of the said bonds and coupons is hereto attached, marked Exhibit C.

Your orator shows that the said bonds, to the amount of $1,289,000, were received by or on behalf of the Winchester and Alabama Railroad Company, through the officers appointed in the act of February 11, 1852, and were, by the said company negotiated and sold, in pursuance of law, to *bona fide* holders. The proceeds of these bonds were to be so applied as to enable the company to which they were loaned, to earn the interest and principal moneys of the said obligations.

About five hundred and six of the said bonds are now outstanding in the hands of *bona fide* holders. Your orator is the owner and holder of five of said bonds, each for $1,000, being of the numbers, dates, and descriptions in all respects of the bonds heretofore described and issued to the Winchester and Alabama Railroad Company by the State of Tennessee.

Your orator is likewise the holder of seven coupons, attached to each one of said bonds, the same representing the installments of interest for three and one-half consecutive years, beginning with the installment that fell due on the 1st of January, 1876, and including the installment of the first day of January, 1879, and amounting in the aggregate to twenty-one per cent. of the par or principal amount of each one of the aforesaid bonds.

Your orator shows that holders of said bonds are very numerous, and reside in foreign countries, as well as in different parts of the United States. Their names are in great part unknown to your orator, and they are therefore not made parties hereto.

And further complaining, your orator shows that the Winchester and Alabama Railroad Company, and the other respondent herein, has failed to comply with the provisions of the general internal improvement law above recited, for the payment of the said installments of interest on your orator's bonds, and on the bonds of other holders in like situation; and the coupons of the bonds aforesaid are now in default and unpaid.

Your orator charges like defaults upon the coupons of all other of said bonds issued to said company, that have fallen due and have become payable by the Winchester and Alabama Railroad Company, according to the terms of the statute, on the first day of January, 1876; on the first day of July, 1876; on the first day of January, 1877; on the first day of July, 1877; on the first day of January, 1878; on the first day of July, 1878; and on the first day of January, 1879. The State of Tennessee is likewise in default on said coupons.

Your orator is entitled to the enforcement of the lien aforesaid, for the payment of interest on his bonds, and those of other holders, and for the appointment of receivers, under the powers and according to the usages of courts of equity, and for the purposes described in the statute.

Your orator further shows that it is provided by the statute, that upon default in the payment of interest by any of the Internal Improvement Companies, upon the bonds issued to it, the right to impound the rents, issues, profits, and dividends shall accrue, for the purpose of paying over the same toward the liquidation of the unpaid interest. For the execution of that purpose, it provides that some suitable person or persons shall be appointed as receivers, to take possession and control of said railroad, and all the assets thereof. Said receiver is to con-

tinue in possession and manage the entire road, until a sufficient sum shall be realized, exclusive of the costs and expenses incident to such proceedings, to pay off and discharge the interest due on the bonds.

And now your orator shows that the said railroad company pretends and claims that the aforesaid lien on its property is satisfied and discharged, without payment of the interest or principal of your orator's bonds, and that it is also absolved from the obligation which it assumed by the acceptance and use of the said bonds to pay the interest thereon.

It claims that the discharge of said incumbrance has been effected by and through the means of certain legislation, enacted in the years 1870 and 1871, many years after the sale of the said bonds, and while the same were outstanding and unpaid, as they still remain, in the hands of *bona fide* purchasers thereof.

Your orator shows that the said pretense is invalid and fraudulent, and he charges the case to be as follows:

During the late civil war the railroad companies did not pay the interest on the bonds issued to them, and after the war they still continued in great part in default in making the payments of interest on the said bonds. The State of Tennessee had likewise been in default during the same time. The market value of the bonds had meanwhile fallen very greatly, and the securities were very much depreciated, to about fifty per cent. or less of their par value.

Under these circumstances, the project was conceived of avoiding the liabilities of the corporations for the payment of the bonds loaned to them, and of enabling the State to reduce her unsecured debt at the expense of the holders of the internal improvement bonds. That project was to be enforced by treating the lien on the railroads as the absolute property of the State, without regard to the trust in favor of the holders of the bonds whose moneys the companies had received. The legislature was to be induced to proceed upon this basis, and to sell and assign the lien on each road, in consideration of the receipt by the State of

an amount of its bonds from each company, without regard to whether they were the bonds issued to and the obligations of the company delivering them, and were entitled to the lien on its road. The procurement of such acts of the General Assembly of Tennessee was sought, as it was deemed would assist in the accomplishment of this project.

Your orator shows that, in pursuance of the above scheme, the General Assembly of Tennessee was induced to pass an act, on July 5, 1870, authorizing certain commissioners, therein named, to sell the interest of the State in all the railroad companies that had failed for two consecutive years to pay the interest upon the bonds that had been issued to them severally. The act further provided "that the said commissioners can dispose of the interest of the State of Tennessee in the defaulting railroads, for a sum of money equal to the amount of the bonds of the State of Tennessee, with unpaid interest due upon them, and which bid may be discharged and satisfied by an equal amount of the bonds of the State of Tennessee, with accrued interest, legally issued by the State of Tennessee in aid of said railroad, or for any other purpose."

Your orator shows that the commissioners named in said act were unable to obtain the minimum price contemplated by the above legislation, and consequently could not effect a sale thereunder.

Your orator shows that the act of December 22, 1870, was thereupon passed, and in and by the provisions of the said act, the commissioners therein named were authorized to sell the delinquent railroads for any amount of bonds of the State, including those not secured by liens upon these roads respectively, leaving the bonds so secured by liens still outstanding and unpaid. By those provisions such legislative purpose and mandate was expressed and was directed to the commissioners named as the executive officers to carry it into effect. This was the scope and design of the legislation, and the administration of these objects was intrusted to the Governor, Comptroller, Secretary of State, and three other commissioners.

The commissioners were authorized to dispose of the roads at public or private sale, as they might judge most advisable. These sales were to be legislative acts, deriving their entire force and efficacy from the statute.

By an act subsequently passed, on November 17, 1871, "the sales made by the commissioners" were, under certain conditions, "ratified, sanctioned, and confirmed, and said commissioners are authorized and fully empowered to place said purchaser or purchasers in full possession of said road so purchased." These directions were to be executed without any other authority than the will of the General Assembly. The said acts are hereto attached, marked Exhibit D, and are prayed to be taken as a part of this bill.

Your orator shows that, in pursuance of the above legislation, and by virtue of the claim of authority derived therefrom, the commissioners proceeded to effect a sale of the Winchester and Alabama Railroad, to parties who took the same with full knowledge of the trusts in favor of the holders of the internal improvement bonds, as will more fully hereinafter be set forth. Of all the legislation in reference thereto, and all the proceedings thereunder, your orator has but lately become cognizant.

Your orator shows that all of the above acts and doings are void in law and fraudulent in fact. The purpose of the legislation was to convert the lien held in trust by the State for the State's benefit. The acts denominated it "to sell the State's interest," and this was to be done for any obligations of the State. The commissioners were, therefore, authorized to make such sale, and, in substance, to sell and assign the mortgage held by the State. This was a violation of the trust reposed in the State by contract with the purchasers of the bonds issued by it to the several companies. Its duty as the trustee of the security was merely to preserve it and enforce it as directed in the statute constituting the deed of trust. It could not so transfer the security, which it held in trust, as to confer a title upon another divested of the trust. The trust was

embodied in a public law, and constituted express notice to everybody. No sale of the statutory lien was authorized by the acts constituting it, and no realization or enforcement of the lien, in any manner, contemplated, save and except for the benefit of the bondholders. All of the above legislative provisions for the transfer of the lien in consideration of other obligations of the State, whether for an amount equal to the issue of the internal improvement bonds, or for a less amount, are violations of contract, unconstitutional, and void.

Your orators further show, that the said act ordered and directed a sale of the said railroad, though the principal of the internal improvement bonds had not become due. For the failure of the corporations to pay interest, the general improvement law provided that a receivership should continue until the unpaid installments of interest had been satisfied. The investment of the bondholders was based on the continuance of their security for the life of the principal debt; they were not to be forced to call in their loans for non-payment of interest, but were to be entitled to all the benefits which could accrue from the property. There was a like provision for defaults in sinking fund payments, as for failure to pay interest. These were the rights of the bondholders, fixed by the contract in the general improvement law. The amendment of that law, providing for a sale for non-payment of interest installments, was enacted in 1867. The amendments to a similar purport, for non-compliance with the sinking fund requirements, were not sought to be enforced by the acts in question, for the sale of delinquent roads for the non-payment of interest, nor did those sinking fund provisions contemplate a sale of the roads.

Your orator shows, that the said acts sought to alter and impair the contract with the internal improvement bondholders, contained in the general law of 1852. They were a violation of the federal constitution, and conferred no right or authority on the commissioners to make the sales referred to, and could not enable them to give any title to purchasers thereof, save and except, it may be, in

trust, for your orator and the other holders of the internal improvement bonds issued by the State of Tennessee to the Winchester and Alabama Railroad Company.

Your orator shows, that the acts purporting to confer jurisdiction of a judicial nature, as hereinafter set forth, violated the constitution of Tennessee, and were and are not laws of the land, and gave no jurisdiction to entertain the said special proceeding. For so it is that the constitution of the State of Tennessee provides against the passage of special laws inconsistent with the general laws of the land.

Your orator further shows that said acts likewise attempted to constitute a court of special andl limited jurisdiction. They defined its powers, and did not authorize any notification of the proceedings to be given to the holders of the State bonds issued to the companies. Without such authority no such notice could be given with any legal effect. The act prescribed a tribunal, which proceeded to pass upon the rights and property of the internal improvement bondholders without any provision for enabling them to be heard in defense of their rights. The said proceeding is void as respects the rights of the internal improvement bondholders, and they are entitled absolutely to disregard it.

The acts violated the constitution of Tennessee, and were void, because they sought to constitute a court of an officer who had already, as counsel, given an opinion upon the questions which it was sought to have formally adjudged, and that opinion was in favor of the views which the legislature sought to enforce.

The said acts also violated the Constitution of Tennessee in this, that they attempted to confer power, in its character non-judicial, upon a judicial tribunal.

Your orator shows that the said acts could not confer any judicial power to determine or adjudicate upon questions that might arise in the future. No judicial power exists for any such purpose, nor any judicial machinery

which can be lawfully used therefor. Neither a legislature nor a court can create questions for the purpose of predetermining them and cutting off the rights of parties not aware of such a sham proceeding. In all the above respects the legislature did, in legal effect, provide only for the opinion of Edward H. East individually, and as advisory to those who were about to risk moneys in the attack upon the security of the internal improvement bondholders.

In all the above respects, those portions of the statutes in reference to judicial proceedings were void. They did not create any court or authority, or give any validity to the proceeding contemplated.

Your orator shows that, pending the said sales by the legislative commissioners, it was deemed advisable to elicit an expression of opinion from an incumbent of some judicial office in the State of Tennessee, in reference to the vailidity of the attack made upon the liens and rights of the internal improvement bondholders.

The general improvement law of 1852 provided that when a bill should be filed to obtain a sale of the roads in the enforcement of the lien of the bonds issued to them, and to receive the payment of said bonds, with the interest thereon, the proceeding should be instituted in the Chancery or Circuit Court of the county in which is situated the place of business of said company.

Your orator shows that about the time of the passage of the act hereinafter referred to, and during the year 1870, an opinion of Edward H. East and others, counsel for the Nashville and Decatur Railroad Company (the Nashville and Decatur Railroad Company being one of the corporations whose roads had been built with the moneys of bondholders who had purchased the bonds issued to it and its several integral parts), had been printed and extensively circulated in the State of Tennessee, That opinion was to the effect that the lien of the bonds on the several roads to which they were issued, and which lien was vested in the State for their payment, was the absolute and peculiar prop-

erty of the State of Tennessee, which she could treat in any manner she saw fit, without regard to any trust in favor of the bond-holders.

Edward H. East had become the Chancellor or Judge of the Chancery Court at Nashville, and then and thereupon the General Assembly enacted that a bill "shall be immediately filed in the Chancery Court at Nashville," although Nashville was not within the county wherein the places of business of nearly all said companies were situated. The said Court was adopted as a special tribunal for the purposes of the act, and "invested with exclusive jurisdiction to hear, adjudicate, and determine all questions of law and matters of controversy of whatever nature, whether of law or fact, that have arisen, or that may arise," in respect to the subject-matter therein referred to.

The act proceeds: "The judge of said Court is hereby empowered and especially requested to appoint a special term of said Court, to be held on the first Monday in March, 1871, for the purpose of expediting a speedy determination of the various matters contemplated by this act."

The parties defendant to the bill are to be "all the delinquent companies, the respective stockholders, holders of the bonds, creditors, and all persons interested in the said several roads."

The questions whose determination was sought to be anticipated and foreclosed were those to arise between the State and any or all of the parties interested in said roads;" and the judge was "to define as may be thought proper what shall be the rights and duties and liabilities of a purchaser of the State's interest in said roads."

Without exception as to fact or law, it was further provided that "the parties, or any of them, may, in person or by attorney, with the consent of the attorney for the State, make an agreed case, submitting all such questions as they may think proper to the immediate decision of the Court."

The time for prosecuting an appeal or writ of error was limited to thirty days from final decree, "in view of

the urgent public necessity for a speedy determination." In case of appeal or writ of error, the Supreme Court "is specially empowered and respectfully requested to take up, and finally dispose of the case, in preference to all other cases on the docket, and, if not in session, to appoint a special term for the immediate hearing of the same." But your orator shows that all of the above ceremony was to be "preliminary to a sale of the State's interest in the road, as declared by the said act."

There was no provision in the acts for making any of the holders of the internal improvement bonds parties to the said proceeding. By the amended bill in the cause, the complainant alleged that it could find only one holder of the State bonds issued by any of the delinquent railroads. This single holder of a single bond on but two out of eleven of these roads was made a defendant, and an order of publication directed for "holders of bonds issued by the State to said companies," to be made in two Nashville newspapers.

Dempsey Weaver, the bondholder aforesaid, filed a form of answer in which "this respondent submits to the honorable court the whole question of his rights and lien, if any, in said roads."

On the 6th day of July, 1871, a decree was entered, reciting as follows:

> "It further appearing that of the roads whose debts have thus been ascertained, the East Tennessee Company and Western North Carolina Railroad have declined a contest with the State in regard to the sale of the State's interest in its road, and a decree has been rendered accordingly for a sale of such interest by the commissioners at once; that all the residue of said companies, except the Southwestern Railroad Company, have consented to a sale of their said several roads, with all their rights, privileges, and franchises, and decrees have been entered accordingly, preference for a limited time being, by such decrees, conceded to the said companies respectively, and then to their stockholders, or such of them as choose to join in the purchase, to become

the purchasers of their said several roads at the minimum price fixed by the Court, in accordance with the act of December 21, 1870, chapter 23, and that a decree has been made for a sale of the Southwestern Railroad Company. It further appearing that it is made the duty of this Court, by the said act, to adjudicate and determine all questions of law and matters of controversy of whatever nature, whether of law or fact, that have arisen, or may arise, touching the rights and interest of the State, and also of the stockholders, bondholders, creditors, and others, in said roads, and likewise to define, as may be thought proper, what shall be the rights, duties, and liabilities of a purchaser of the State's interest in said roads, or either of them, and what shall be the reserved rights of said companies, stockholders, and others, respectively, as against said purchasers, after such sale, under the existing laws of the State; and it further appearing to the satisfaction of the Court, that the holders of the State bonds issued by the State to the said several companies are properly made defendants to this suit, and are sufficiently represented by the holders of such bonds as are made defendants by name, or have come in and answered."

Your orator shows that the proceedings before Chancellor East are null and void, and do not constitute any bar of the rights of the complainant, inasmuch as the bill was filed by a trustee, in disaffirmance of his trust, and preliminary to an attempted destruction of the trust security for his own advantage. In that proceeding the *cestuis que trust* were necessary parties. The statute gave no authority to bring them into the cause, and the service and publication and appearance were *coram non judice*, and lent no authority to the judgment which was entered.

The proceedings were not judicial, nor within the jurisdiction of the Court, but were purely matters of convention and agreement, as appears on the face of the decree itself.

There was no Court organized under the constitution of Tennessee, because Edward H. East, the sole presiding

judge, had given an opinion as counsel in favor of the claims, which the State sought to exercise.

And so it was that the said Edward H. East proceeded to reiterate from the bench an opinion to the same effect as the one he had pronounced as counsel. And the Louisville and Nashville Railroad Company, being the lessee for years of the said Nashville and Decatur Railroad Company, availed itself of the said opinions to become the purchaser of one of the largest properties sold by the commissioners, to wit, the Memphis, Clarksville and Louisville Railroad.

The Court had no authority to confirm the sales made by the commissioners, and all its action in that respect was *coram non.*

Your orator shows that the litigation was purely fictitious. The chancellor confessedly passed upon all questions that might arise after everything had been consented to, and there were no questions before him.

Your orator shows that the entire transaction, both in its legislative and judicial forms, exhibits violations of trust and patent fraud, and binds the purchasers of the property as trustees for the Internal Improvement bondholders.

The complainant sought an expression of opinion from an officer of Court, to facilitate her in obtaining a better price for property of which her legislature had directed a sale to take place for her sole benefit, and in violation of her trust. This sale was accompanied by a ceremonious litigation, but was not made by virtue of the same, nor was any power conferred on the Court to prevent or in any manner affect the sale or the receipt of the trustees' obligations for the property of her *cestuis que trust.* The defendants united in this purpose, and consented to its being carried out, upon condition that they should have the advantages of it, by delivering depreciated State obligations at their face value for them. Other benefits were to be received by the corporations and their stockholders, as appears from the record of the proceedings, of which your orator will bring proof on the hearing. The expenses of

the respondent were, by like consents, paid out of the proceeds of the property.

The purchasers were Moses J. Wicks, and J. J. Donegan, C. M. McGhee and John Overton. The said C. M. McGhee was then a director of one of the Internal Improvement Companies that had received bonds under the same statutes as authorized the issues to the Winchester and Alabama Railroad Company. The Nashville, Chattanooga and St. Louis Railroad claims to have acquired the said road, and now possesses and operates the same.

Your orator further avers and shows that the said pretenses and claims are illegal, void, and fraudulent. The defendants never had, nor have they, any right to affect or impair the contract and lien which was created and entered into by and between the holders of the internal improvement bonds loaned by the State of Tennessee to the railroad company, and the State of Tennessee as trustee of the said lien or mortgage, and the railroad company as the debtor under the said contract and lien.

Your orator further charges that by the terms of the general improvement law of February 11, 1852, the State of Tennessee constituted herself the trustee for whomsoever might become the holders of the bonds loaned to the several railroad companies named in the act. The terms of that trust were defined and set forth in the sections of the statute.

By the acceptance of the bonds, and the use of their proceeds by the Winchester and Alabama Railroad Company, a mortgage lien attached to the property of the company, without a deed from the company, and the conditions of that mortgage were as prescribed in the statute. By the purchase of the said bonds, the holders thereof became entitled, by contract, to the lien rights set forth in the internal improvement law. That lien was distinctly specified to be for the payment of the principal and interest of the bonds issued to them.

Your orator charges that the acts, of date subsequent to the issuance of said bonds, in so far as they attempt, or

may be construed to have authorized the satisfaction of the statutory lien established for the benefit of the holders of the internal improvement bonds of Tennessee loaned to the said company, by any other means than payment, impaired or sought to impair the obligation of the contract aforesaid, and were in violation of the federal constitution, and void, and all acts committed thereunder are illegal and null.

And your orator furthermore shows that no advisory proceeding of a chancellor, declaring his opinion of the legal effect of the acts of the Tennessee General Assembly, and of the execution of those acts, can affect your orator's rights and those of the other internal improvement bondholders, especially when he and they were not parties to the proceeding nor cognizant of its existence, and when the opinion of the sole presiding judge had already been elicited as counsel adversely to the rights of the bondholders.

Your orator likewise shows that, by virtue of his right in equity as a lienholder and the terms of the statutory mortgage above described, he is entitled to have the possession of the Winchester and Alabama Railroad, in the State of Tennessee, secured by a receivership, for the benefit of the holders of the internal improvement bonds aforesaid, issued to the Winchester and Alabama Railroad Company, and for the payment of the interest thereon, for which the said company became bound. The receiver or receivers so to be appointed should apply the revenues of the property to the payment of the overdue interest on said bonds.

Your orator shows that the officials of the State of Tennessee, named in the internal improvement law for the execution of the trusts pertaining to the statutory receivership, to wit, the comptroller and the governor, claim to be bound by the subsequent acts of the General Assembly of Tennessee, passed in the years 1870 and 1871, to abstain from any action toward the enforcement of said trust, and your orator is unable to obtain the action of the said officials, or of the State of Tennessee, as trustee for the execution of

the trusts aforesaid. Your orator shows that he is remediless at law and without the intervention of a court of equity.

Wherefore, your orator prays that the priority of the said lien of the internal improvement bonds and coupons aforesaid, upon all the railroad equipment, incomes, tolls, rights, privileges, property, and franchises of said Winchester and Alabama Railroad Company, within the State of Tennessee, may be established above all other claims and demands, as constituting the first and paramount incumbrance on said property and rights. That the income of said property, arising from its use in said State, may be applied to the payment of interest accrued and to accrue upon the bonds hereinbefore described, and as may appear by proofs before a master to be still outstanding and unpaid. That the said property may be seized by order of this Court, and placed in the hands of receivers, to be administered according to the liens and trusts declared upon it, and to which it has been pledged and covenanted to be applied.

And, may it please your Honors, to grant unto your orator such further or other and different relief in the premises, as the nature of the case may require, and be consistent with equity and good conscience.

May it please your Honors, to grant unto your orator writs of subpœna of the United States of America, to be directed to the said Winchester and Alabama and the Nashville, Chattanooga and St. Louis Railroad Companies, and against all other persons interested in this matter and amenable to the jurisdiction of this Court, when discovered, thereby commanding them and every one of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honors, in this honorable Court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such orders and decrees therein as to your Honors shall seem meet.

E. L. ANDREWS and GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

APPENDIX.

Exhibit B.

ACT OF FEBRUARY 8, 1854.

AN ACT to amend an act passed 11th February, 1852, entitled "An Act to establish a system of Internal Improvement in this State."

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the bonds of the State shall issue to the companies mentioned in the first and tenth, and nineteenth sections of the act which this is intended to amend, and also to the "Edgefield and Kentucky Railroad Company," "Central Southern Railroad Company," "Knoxville and Charleston Railroad Company," Mississippi Central and Tennessee Railroad Company," "Knoxville and Kentucky Railroad Company," "Tennessee Western and Charleston Railroad Company," and "Cincinnati, Cumberland Gap and Charleston Railroad Company," *upon the terms and conditions mentioned in the act which this is intended to amend*, but to the extent of ten thousand dollars (instead of eight thousand) per mile. *Provided*, that the aid of the State shall be extended to the South Carolina, Tennessee and Kentucky Railroad Company, in lieu of the Knoxville and Charleston Railroad Company, to the extent of fifty-five miles, and no more, in the event the Blue Ridge Railroad Company of South Carolina shall adopt the charter of said South Carolina, Tennessee and Kentucky Railroad Company, and obligate themselves in such manner as shall be satisfactory to the Governor, not to stop the construction of the said road at a junction with the East Tennessee and Georgia Railroad, but to build said road to South West Point; and said South Carolina, Tennessee and Kentucky Railroad Company, before it shall receive the aid herein provided, shall bring itself within the general provisions in all respects, of the act which this is intended to amend. But should the Blue Ridge Railroad Company not adopt such charter, and enter into the obligations aforesaid, then the provisions of this act and that which it is intended to amend, shall apply in all things to the Knoxville and Charleston Railroad Company.

SEC. 2. *Be it further enacted*, That bonds of the State shall issue to the companies mentioned in the first section of this act, and the tenth and nineteenth sections of that which this is intended to amend, for each bridge that said companies, or either of them, may have to build in East, Middle, and West Tennessee, across the Holston, Clinch, Big Hatchie, Tennessee, and Cumberland rivers, for the maximum sum that bonds are provided to be issued to said East Tennessee and Georgia Railroad Company, by an Act passed February 4, 1852, entitled, "An Act to aid in the completion of the East Tennessee and Georgia

Railroad," and upon the terms and conditions mentioned in said Act (except the 2nd section), and also in the fifth and sixth sections of an Act, passed February 26, 1852, entitled "An Act to charter the Chattanooga, Blue Spring, and Cleveland Railroad Company, and for other purposes," and said bonds to be issued under this section shall be included in the aggregate amount of stock raised by said companies in the same manner that the three hundred thousand dollars of bonds loaned to the East Tennessee and Virginia Railroad Company, under an Act, passed January 15, 1852, to enable said company to build bridges, are provided to be included in the aggregate amount of stock to be raised by the East Tennessee and Virginia Railroad Company.

SEC. 3. *Be it further enacted*, That the office of "Commissioner of Roads" be filled by the appointment of the Governor; that the incumbent shall hold his office for two years, and shall receive an annual salary of two thousand dollars. It shall be his duty to examine into the condition of railroad companies applying for the bonds of the State, and to report on oath to the Governor, the condition of said roads and the companies owning them; inquiring into and reporting all the facts necessary to be reported upon under this Act, and that which this is intended to amend. He shall further superintend and supervise the interest of the State in all the railroads and turnpike roads of this State, and whenever he may deem it necessary, report to the Governor any facts he may believe to be of importance to said interest. The said commissioner, in making his investigations, shall have the power to administer oaths, and send for persons and papers; and may, if in the opinion of the Governor it should be necessary and proper, apply to the Courts for aid to protect said interests; and it shall not be lawful for the Governor to issue such bonds to any railroad company until he shall be satisfied they have complied with the law.

SEC. 4. *Be it enacted*, That if any officer, agent, or servant of any railroad company receiving the bonds of the State, shall appropriate said bonds or the money arising from the sale thereof, or any portion of either, to any other use than that prescribed in the Act under which said bonds shall be issued, such person or persons so offending shall be deemed guilty of a felony, and, upon conviction, shall undergo confinement in the penitentiary for a period of not less than five nor more than fifteen years.

SEC. 5. *Be it enacted*, That no road embraced in this Act shall be entitled to its provisions, unless it shall, within four years, grade one section of thirty miles.

SEC. 6. *Be it enacted*, That the Governor shall indorse and guarantee the bonds of the Nashville and Chattanooga Railroad Company to an amount not exceeding six hundred and fifty thousand dollars, and the State shall thereupon, by virtue of this Act, be invested with a lien

upon the entire road of said company, with all its equipments, fixtures, etc., and shall have the same remedies for enforcing said lien as are given by previous Acts of the General Assembly directing an indorsement of the bonds of said company. The provisions of this Act shall extend to all railroad companies mentioned in the aforesaid Act, passed February 11, 1852, whose charters, routes, or names have been, or may hereafter be, changed; and if any two or more of said companies shall be consolidated, they, or the consolidated company, shall still be entitled to the provisions of this Act.

SEC. 7. *Be it further enacted*, That the Mississippi Central and Tennessee Railroad Company shall be entitled to the provisions of this Act from Jackson, Tennessee, to the Tennessee river, for any extension of said road which said company may make from Jackson by way of Huntingdon in the direction of Nashville. And, *provided further*, that nothing in this Act shall be so construed as to extend the time for the completion of the first section of the roads mentioned in the said Act of 11th February, 1852.

SEC. 8. *Be it enacted*, That the bonds to be issued under the provisions of this Act shall, *in no case be sold at less than par.*

SEC. 9. *Be it further enacted*, That the first section of an Act, passed February 11, 1852, entitled "An Act to establish a system of internal improvements in this State," be so amended that whenever the East Tennessee and Virginia Railroad Company shall have graded and shall have ready to put down the necessary timbers for the reception of rails, as is contemplated in said section, from Knoxville to the Holston river at Magbie's ferry, or to the Holston river at Middletown, at each end, it shall be the duty of the Governor to issue bonds of the State to the company, as is required in said section, and when said company shall have complied with the above requisitions, it shall be considered as fulfilling the requirements in full of the first section of the Act above referred to.

SEC. 10. *Be it enacted*, That the provisions of this Act shall extend to and embrace the Mississippi and Tennessee Railroad Company, chartered 5th December, 1853, and the State aid given to other roads by this Act shall be given in like manner to the said Mississippi and Tennessee Railroad, so far as the same lies in the State of Tennessee.

SEC. 11. *Be it enacted*, That the farther time of two years is hereby extended to the Southwestern Railroad Company to bring themselves within the provisions of the Act entitled "An act to establish a system of internal improvements in this State."

SEC. 12. *Be it further enacted*, That this Act shall take effect from and after its passage.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF FEBRUARY 17, 1854.

AN ACT to amend the charter of the Memphis and Somerville Turnpike Company, and for other purposes.

. . . . . .

SEC. 5. *Be it enacted*, That the fourth section of an Act to establish a system of internal improvements in this State be amended by striking out the word *twenty* wherever it occurs in said section, and inserting the word *ten*, so as to allow all the railroad companies entitled to the benefits of said act, and an Act, passed February 8, 1854, as an amendment thereto, to obtain the bonds of the State upon sections of *ten* miles instead of *twenty* miles, after the first section of thirty miles has been completed.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF JANUARY 19, 1855.

AN ACT to amend the Internal Improvement Acts of 1852 and 1854.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That hereafter it shall not be necessary for the Engineer-in-Chief to swear to the subscription list, solvency, and condition of any railroad company applying for State aid, but the oath required of the Engineer shall be taken by the President and Treasurer of the company, whose duty it is to know of the condition, solvency, and financial affairs of said company.

SEC. 2. *Be it further enacted*, That it shall be lawful and proper for the East Tennessee and Virginia Railroad Company to lay down iron at either end of said road, and to draw the bonds of the State according to the General Internal Improvement Act, passed February 11, 1851–2, and the Act of February, 8, 1853–4.

SEC. 3. *Be it enacted*, That the fifth section of the Act of February 17, 1854, be so amended that hereafter the bonds of the State may issue for ten miles or more of road graded, as required by existing laws, after the completion of the first thirty miles.

SEC. 4. *Be it further enacted*, That so much of the General Internal Improvement Acts of 1851–2, and 1853 and 1854, as requires the several railroad companies embraced within the provisions of the aforesaid Acts to have the bridges, abutments, and embankments on the several sections of their respective roads completed before the bonds of the State shall issue to the companies of said roads, be so amended as to accept those bridges, abutments, and embankments which have been provided with State aid.

SEC. 5. *Be it enacted,* That this Act shall take effect from and after its passage.

NEILL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHAM,
Speaker of the Senate.

Exhibit C.

$1,000. $1,000.

No. UNITED STATES OF AMERICA. No.

Know all men by these presents: That the State of Tennessee acknowledges to owe to , or order, One Thousand Dollars of the lawful money of the United States of America, which the said State promises to pay in the city of New York, on the day of , 18 , with interest thereon, at the rate of six per cent. per annum, according to the tenor, and upon the presentation of the coupons hereunto attached. For the payments of said sums of money, and the interest thereon, at the times and places, and in the manner aforesaid, the faith of the said State of Tennessee is irrevocably pledged, this bond being issued in pursuance and by authority of an act of the General Assembly of said State, passed February 11th, 1852, to establish a system of Internal Improvements in said State.

In testimony whereof, and in pursuance of the acts aforesaid, I, , Governor of the State of Tennessee, have hereunto subscribed my name officially, and caused the same to be countersigned by the Secretary of State, with the great seal of the State affixed.

[ ] Done at the Executive Department in the city of Nashville, this day of , 18 .

To which was attached the following form of coupon:

30. THE TREASURER OF THE STATE OF TENNESSEE. 30.

Will pay the bearer THIRTY DOLLARS, in the city of New York, on the first day of January, 1877, being the semi-annual interest then falling due on bond No.

J. C. SUTTRELL, 30.
Comptroller.

Exhibit D.

ACT OF JULY 5, 1870.

AN ACT authorizing the sale and transfer of the interest of the State in delinquent railroad companies.

WHEREAS, Under an act of the General Assembly of the State of Tennessee, passed December 7, 1867, entitled "An Act to amend the Internal Improvement Laws of this State, passed February 11, 1852," the Governor, Secretary of State, and Comptroller are empowered, in their discretion, upon the failure of any of the railroad companies mentioned in said act, "for two consecutive years, to pay the interest that may accrue upon the bonds loaned to them severally," to sell the railroad track, railing, rolling stock, etc., upon such terms and conditions as they may deem best to secure the interest of the State, "and shall retain of the proceeds of said sale the amounts loaned to said companies, and the interest due on the same, with expenses of said sale;" and,

WHEREAS, "The time has arrived when it is necessary to protect the interests of the State, and to secure the State from loss, in consequence of the issuance of bonds to the several railroad companies of the State, that a sale should be made of the interest of the State in each and every railroad company in this State, which has heretofore failed to pay the interest that has accrued on the bonds of the State loaned to it, or which may hereafter fail to pay the interest as it accrues on the bonds of the State loaned to it;" and,

WHEREAS, It is important to relieve the people of the burden now upon them, and by wise legislation endeavor to restore the public credit, which can be done by a proper enforcement of the legal rights of the State of Tennessee as against said railroad companies so in default; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the Governor of the State, Secretary of the State, and Comptroller of the Treasury, and Robert J. McKinney, of Knox county; Francis B. Fogg, of Davidson county, and Archibald Wright, of Shelby county, be, and the same are hereby appointed commissioners to sell the interest of the State of Tennessee in all the railroad companies of the State, "to whom the bonds of the State have been loaned, by the act of December 7, 1867, or former acts, and which have failed, for two consecutive years, to pay the interest that have accrued upon bonds loaned to them severally;" and also in all railroad companies that may hereafter fail to pay the interest that may, or has, accrued on the bonds loaned to them severally, or that are now in default of payment of the interest which has accrued upon the bonds loaned to them severally, with full authority to make and perfect said sales in all cases where the said commissioner can dispose of the in-

terest of the State of Tennessee in the defaulting railroad, for a sum of money equal to the amount of the bonds of the State of Tennessee, with unpaid interest due upon them, and which bid may be discharged and satisfied by an equal amount of the bonds of the State of Tennessee, with accrued interest, legally issued by the State of Tennessee, in aid of said railroad company, or for any other purpose, and with full power to place the purchaser or purchasers in the quiet possession of the railroad so purchased.

SEC. 2. *Be it further enacted*, That if any receiver, who shall have control of any or either of the railroads of the State, and which road may be sold by the commissioners, under the first section of this act, shall refuse to give possession of said railroad track, railing, rolling stock, etc., to the purchaser, upon demand the Governor of the State shall issue his warrant to the sheriffs of the different counties through which the road may run, commanding them to put the purchaser or purchasers in possession of the railroad, its property and effects, and the receivers so refusing shall be guilty of a high crime, and, upon conviction, shall be fined in a sum of not less than one thousand dollars, and imprisoned at the discretion of the court.

SEC. 3. *Be it further enacted*, That in the event said commissioners can not sell said defaulting railroads, or either of them, for the amount and upon the terms as prescribed in the first section of this act, then the said commissioners are authorized, after giving such public notice as they may deem advisable or necessary, to receive sealed bids from any person, persons, or corporation for the purchase of either of the delinquent railroads of the State, and, after giving thirty days' notice of the time and place, shall open the bids so made, and the said commissioners will report to this or some subsequent General Assembly the best bid offered, with such recommendation as to them may seem best for the interest of the State, for the approval or rejection of the General Assembly.

SEC. 4. *Be it further enacted*, That no less than four of the commissioners named in this act shall be competent to perform any duties required by this act.

SEC. 5. *Be it further enacted*, That the commissioners, in making a sale of the interest of the State in any of the railroads, shall give the preference to the purchaser or purchasers, who will obligate himself or themselves, to operate the road so purchased over its entire line, from terminus to terminus; and that as the public welfare demands it, this act shall take effect from and after its passage.

Passed July 1, 1870.

W. O'N. PERKINS,
Speaker of the House of Representatives.

D. B. THOMAS,
Speaker of the Senate.

D. W. C. SENTER,
Governor.

ACT OF DECEMRER 22, 1870.

An Act to Amend the Act of 1870, chapter 79, for the sale of Interest of the State in Delinquent Railroad Companies, passed July 1, 1870.

WHEREAS, In the recent attempt to sell the State's interest in said roads, various legal questions arose, presenting serious obstacles to a sale under the act of 1870, which it is deemed expedient and necessary to obviate before the interest of the State in said roads shall be again offered for sale; and, *whereas*, by the act of 1862, chapter 151, section 12, the right is expressly reserved to the State to enact all such laws in the future as shall be deemed necessary to protect the interest of the State, and to secure the State against any loss in consequence of the issuance of bonds under the provisions of said act, in such manner as not to impair the vested rights of stockholders of the companies, therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That a bill shall be immediately filed in the Chancery Court at Nashville, in the name and on behalf of the State, to which all the delinquent companies, the respective stockholders, holders of the bonds, creditors, and all persons interested in the said several roads, shall be made parties defendant, and shall be brought before the Court, in the mode prescribed by the rules of practice in chancery established in the State, except as otherwise herein provided. And said Court is hereby invested with exclusive jurisdiction to hear, adjudicate, and determine all questions of law and matters of controversy, of whatever nature, whether of law or of fact, that have arisen or that may arise touching the rights and interest of the State, and also of the stockholders, bondholders, creditors and others in said roads; and to make all such rules, orders, and decrees, interlocutory and final, as may be deemed necessary in order to a final and proper adjustment of the rights of all the parties, preliminary to a sale of the interest of the State in said road. Also, to declare the exact amount of indebtedness of each of said companies to the State; and likewise to define, as may be thought proper, what shall be the rights, duties, and liabilities of a purchaser of the State's interest in said roads, or either of them, and what shall be the reserved rights of said companies, stockholders, and others respectively, as against said purchasers, after such sale, under the existing laws of this State.

SEC. 2. *Be it further enacted*, That the judge of said Court is hereby empowered, and specially requested to appoint a special term of said Court, to be held on the first Monday in March, 1871, for the purpose of expediting a speedy determination of the various matters contemplated by this act; and it shall be the duty of the clerk of said Cuort, immediately on the filing of said bills, to issue process and make publication in the manner before indicated, requiring the defendants to

appear at said special term; and the defendants shall be severally required at said term to put in such defense to said bills as they may respectively deem proper, provided that it is consistent with the code. And in order to save expense, said parties, or any of them, may, in person or by attorney, with the consent of the attorney for the State, make an agreed case, submitting all such questions as they may think proper, to the immediate decision of the Court. And it is further provided, that in the discretion of the Court, formal pleadings may be dispensed with by a simple statement on the record of the points or matters relied upon by the parties, and sought to be decided by the Court.

SEC. 3. *Be it further enacted*, That if an account, on behalf of either of the parties, shall seem to the Court proper and necessary, touching any matters of fact in issue between the parties, an immediate reference of the same shall be made to the clerk and master, or, if thought preferable, to such special commissioner as the Court may appoint, who shall proceed at once to take such account, and make a report to an adjourned term of the Court, within such period as the Court shall limit, not exceeding twenty days from the date of the decree ordering the account. And at such adjourned term final action shall be had upon said report. But the taking of such account shall not postpone the determination of all such questions of law presented by the parties as are not involved in the matters of account ordered to be taken.

SEC. 4. *Be it further enacted*, That competent counsel shall be retained on behalf of the State, by the commissioners, whose duty it shall be, immediately on the passage of this act, to file a bill in said Chancery Court, so framed as to elicit a determination by the Court of all questions of law and matters of controversy now existing, or that may hereafter arise between the State and any or all of the parties interested in said roads, and to conduct the suit and superintend its progress, with a view to the speediest practicable determination; and for such services said counsel shall be paid a fair compensation out of the public treasury.

SEC. 5. *Be it further enacted*, That, upon a final decree being made by the Chancellor, settling the rights of the parties, either party shall have the right of appeal on writ of error to the Supreme Court, in the usual mode, except that the time for prosecuting a writ of error is hereby limited—in view of the urgent public necessity for a speedy determination—to thirty days from the final decree, and in case of an appeal or writ of error to the Supreme Court, a transcript of the record, or such part thereof as may be thought necessary, shall be filed in the office of the Supreme Court at Nashville, within said period of thirty days.

SEC. 6. *Be it further enacted*, That in the case of an appeal or writ of error to the Supreme Court, as herein provided for, the judges thereof,

in view of the pressing exigencies of the State, are hereby specially empowered, and respectfully requested, as soon as the transcript of the record shall be filed in the office of said Court, if then in session, to take up and finally dispose of the case, in preference to all other cases on the docket, and if not in session, to appoint a special term for the immediate hearing of the same.

SEC. 7. *Be it further enacted*, That in case any of the said railroad companies should decline a contest with the State in regard to the sale of the State's interest in their roads, a sale may at once be made, and, upon the final determination of any controversy that may arise between the State and any of said railroad companies in the Chancery or Supreme Court, the interest of the State in such roads shall immediately be brought to sale by the commissioners.

SEC. 8. *Be it further enacted*, That a specific value shall be fixed upon the State's interest in each of said roads by the decree of the Court, and the commissioners shall be authorized to dispose of the same at such valuation, either at public or private sale, as they may judge most advisable; and if a sale of any of the roads can not be made at such valuation, the same shall be sold for the highest price that can be obtained.

SEC. 9. *Be it further enacted*, That the interest of the State in either of said railroad companies may be sold on time, and the amount agreed to be paid by the purchasers may be discharged in any of the outstanding legal bonds of this State; but a sale on time shall be upon the following express conditions: The purchaser at the time of sale shall pay, or deliver to the governor, at least one-fourth of the amount agreed to be paid, in legal bonds of the State, and shall execute a bond with sufficient security to the governor for the delivery of the remainder of the bonds to be paid at intervals of one, two, and three years from the date of the sale, in like legal bonds of the State, and also to pay into the treasury from the time of his purchase an amount equal to the interest accruing semi-annually from the remaining three-fourths of the bonds, to be thereafter delivered by him, until the whole amount shall be delivered to the Governor, said interest to be paid as the bonds mature; and it is expressly declared that the failure of the purchaser to pay or deliver to the Governor any subsequent installment of bonds as above provided, when the same shall fall due, shall work an absolute forfeiture to the State of all and every payment previously made; and, in addition, his interest in such road shall be resold by the commissioners, after forty days' notice, to meet the default in payment by him.

SEC. 10. *Be it further enacted*, That upon the sale of any of the franchises of either of the railroad companies, by the commissioners, under the provisions of this Act, all the rights, privileges, and immunities appertaining to the franchise so sold under its Act of incorpora-

tion, and the amendments thereto, and the general improvement law of the State and Acts amendatory thereof, shall be transfered to and vest in such purchaser, and the purchaser shall hold said franchise, subject to all liens and liabilities in favor of the State, as now provided by law against the railroad companies.

SEC. 11. *Be it further enacted*, That whenever hereafter, any existing railroad company, to which bonds of the State have been issued or loaned, or any railroad company to be hereafter created, shall fail to pay the State the interest due thereon, for the benefit of the bondholders, or should fail to pay in as required by law, the sinking fund, they may be proceeded against, in the Chancery Court at Nashville, in the same manner as above provided in regard to existing delinquent railroads.

SEC. 12. *Be it further enacted*, That this Act shall take effect from and after its passage, the public welfare requiring it.

Passed December 21, 1870.

W. O'N. PERKINS,
Speaker of the House of Representatives.
D. B. THOMAS,
Speaker of the Senate.
D. W. C. SENTER,
Governor.

AN ACT to enable the Railroad Commissioners for the State, for the sale of delinquent railroads, to perfect their sales, and place the purchasers in possession. Passed November 17, 1871.

Whereas, The Commissioners are hindered to some degree in the final consummation of one or more of their contracts of sale, by reason of litigation on the part of adverse claimants; and

Whereas, In one or more instances of sale, the option is reserved to the purchaser or purchasers of taking the interests of the State, in the road contracted to be purchased by him or them; and

Whereas, It is manifestly to the interest of the State that the work entrusted to the said Commissioners should be completed at the earliest day practicable; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That with the view of removing all embarrassments and facilitating the accomplishment of the purposes above indicated, the said Commissioners, viz: the Hons. Robert J. McKinney, Francis B. Fogg, Archibald Wright, the Governor, the Comptroller, and the Secretary of State, or a legal quorum of their number, be and they are hereby authorized and fully empowered to make and carry into full effect, on the part of the State, any settlement or adjustment with parties liti-

gant adversely to the State that to them may seem equitable between the parties, and advantageous to the interest of the State.

SEC. 2. *Be it further enacted*, That in the event the purchaser or purchasers in any of the sales so made by the Commissioners, in which was reserved to him or them the option of taking the State's interest, should elect to take the interest of the State, then the sale is hereby ratified, sanctioned, and confirmed; and said commissioners are authorized and fully empowered to place the said purchaser, or purchasers, in full possession of said road so purchased, and all its appurtenances, in the manner provided for in sections 1 and 2 of an act passed July 5, 1870, entitled "An Act authorizing the sale and transfer of the interest of the State, in delinquent railroad companies," any act, or acts, with regard to the qualification or appointment of receivers to the contrary notwithstanding.

SEC. 3. *Be it further enacted*, That in any instance where the said commissioners, including specially the Governor, Comptroller, and Secretary of State, may have contracted to sell the railroad track, railing, rolling stock, etc., of any railroad company, which, for two consecutive years, prior to said sale, may have failed to pay the interest accrued upon the bonds loaned to it by the State, and which may have accepted aid from the State under an act passed December 7, 1867, entitled an "Act to amend the Internal Improvement laws of the State," passed February 11, 1852, in such case the sale so made shall be valid and operative, *as against the State*, and said company, to all intents and purposes, to transfer (without warranty of title to the interests of said company) said railroad track, railing, rolling stock, etc., to the purchaser or purchasers in said sale.

SEC. 4. *Be it further enacted*, That upon the consummation of the sale of any railroad, or the State's interests therein, that may have been leased by act of the General Assembly, with the reserved right to the State to terminate the same, then the said lease shall instantly terminate, and the State be no further liable for any expenditures by the lessee upon said railroad, nor for any further losses resulting thereafter from the operation of the same.

SEC. 5. *Be it further enacted*, That this act take effect from and after its passage, the public welfare requiring it.

JAMES D. RICHARDSON,
Speaker of the House of Representatives.
JOHN C. VAUGHN,
Speaker of the Senate.

No.....

UNITED STATES CIRCUIT COURT,

Sixth Judicial Circuit, Middle District of Tennessee.

IN EQUITY.

Calvin Amory Stevens, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to The Winchester and Alabama Railroad Company,

versus

The Winchester and Alabama Railroad Company et al.

ANSWER.

EAST & FOGG,
R. McP. SMITH,
Solicitors, and of Counsel for Respondent.

THE ANSWER OF THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY (SUMMONED, IN THIS CASE, BY THE NAME OF "THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILROAD COMPANY"), DEFENDANT, TO THE BILL OF COMPLAINT FILED BY CALVIN AMORY STEVENS IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, AGAINST THE WINCHESTER AND ALABAMA RAILROAD COMPANY AND OTHERS.

This respondent, for answer unto so much of said bill as it is advised is material for it to make answer unto, answering, says:

This respondent is a corporation chartered by the General Assembly of the State of Tennessee to construct and operate a railroad from the city of Nashville to Chattanooga, on the Southern border of the State, by the name of "The Nashville and Chattanooga Railroad Company," its name being afterwards changed to that of The Nashville, Chattanooga and St. Louis Railway.

On February 9th, 1850, the said General Assembly chartered The Winchester and Alabama Railroad Company.

Whether said Winchester and Alabama Railroad Company is now a corporation in the State of Tennessee, respondent submits to the Court, under its history as given herein. Respondent admits that said two companies were endowed with all the capacities and powers charged in the bill.

Respondent admits that on the 11th of February, 1852, the General Assembly passed an act entitled "An Act to establish a system of Internal Improvements." This act applied to railroads. Long prior to said act the General Assembly had passed an

act providing for giving aid to turnpike companies.

Respondent says that said two acts were passed in obedience to art. XI, sec. 9, of the then Constitution of the State, which was as follows: "A well regulated system of internal improvement is calculated to develop the resources of the State, and promote the happiness and prosperity of her citizens, therefore it ought to be encouraged by the General Assembly."

Respondent says that the act of the 11th of February, 1852, is substantially, but not literally, set out in complainant's bill, but respondent denies complainant's punctuation and italics and his construction of said act. Respondent will, at the hearing, produce the act, together with its amendments, as published in the statutes of the State.

Respondent is content to deny the rights complainant claims under said acts, without specifying herein the arguments or reasons for its conclusion. Respondent's views will be submitted in the brief of its solicitors.

Respondent does not know what bonds, or how many, were issued to said company, or at what time or under what circumstances, or whether the same were lawfully issued or not; nor does it know whether the bonds so issued were sold at par or not; nor whether the officers of the State kept any record of the bonds so issued in any form, nor whether the same can now be traced or identified, nor whether the bonds now claimed by complainant were ever issued to said company; but will require complainant to prove these facts, so far as they are material to his rights.

Respondent says that it is informed, believes, and charges, that the bonds issued in aid of railroad companies by the State were purely and simply State bonds, the State being the payor and the bearer the payee, and were negotiable without en-

dorsement, and that the names of the railroad companies to which they were issued did not appear upon the same in any manner; and respondent admits that Exhibit C to complainant's bill is a true copy of one of said bonds.

Respondent further answering, says that the bonds so issued were put upon the market and sold as obligations of the State of Tennessee alone; and respondent says that while the State had issued many bonds for different purposes, and many of these were not supported by any lien, real or pretended, all of her bonds sold alike in the markets.

Respondent further answering, says that none of said bonds were put upon the market and sold, or were negotiated, with the understanding or agreement that the same were secured by any lien whatever, and that the idea of a lien is an afterthought, not conceived until the State became financially disabled, and there arose an apprehension of repudiation; and that even then all the bonds retained the same market value, so far as the question of a lien was concerned, and if there has been any appreciable difference in the value of said bonds, it arose from political considerations solely. Bonds issued for general purposes, bonds issued to solvent companies, and bond issued to insolvent companies, were all of the same market value.

Whether complainant has a lien upon said Winchester and Alabama Railroad or the property of the company, has now become a judicial question, to be determined upon the acts of the General Assembly relative thereto. Complainant is content to deny said lien, and will cheerfully submit said acts to the Court.

Respondent has always understood that as these bonds were issued to the respective companies when just coming into life and unknown to the money lenders of the world, and having neither property

nor reputation to secure the loans, while the State, before the late war, was of good repute in the money markets of the world, its bonds selling at par or nearly so, the State made and issued her obligations and put the same in the hands of the company or its officers, as set out in said acts, to be sold and the proceeds applied as directed therein; and to secure herself as *creditor* of the companies she retained a lien in her own favor, and coupled the issuance of the bonds and the rights of the subsequent holders thereof, with the right on her part "to enact all such laws as may be deemed necessary to protect the interest of the State, and to secure the State against any loss in consequence of the issuance of bonds under the provisions of this act, but in such manner as not to impair the vested rights of the stockholders of the companies"

It is certain that the most most casual reading of said act of February 11, 1852, and its amendment, will disclose that the *State* did preserve a lien to herself as *creditor*, not as endorser or surety; and it would be somewhat surprising if the bondholders have a lien also, as we should then have two independent liens arising upon the face of the same act and by the same words.

Sec. 3 of said act does declare "that so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon said section," etc. But in whose favor does this lien arise? Said section replies,—"and the *State of Tennessee* upon the issuance of such bonds, *and by virtue of the same*, shall be invested with said lien or mortgage without a deed from the company, for the payment by said company of said bonds, with interest thereon as the same becomes due."

Sec. 4 of said act, among other things, provides that the State's lien shall have *priority* over any

other lien, and that any other lien "shall be null and void as against said lien or mortgage of the State, and the said lien or mortgage of the State shall have *priority over all other claims existing or to exist against* said company."

If complainant can establish any lien whatever, it must, if there be any power in language, be subordinate to that of the State.

Complainant submits to the court whether said act and its amendments do not clearly assert the State's lien upon the road, its property, etc., and the priority of said lien over all other claims or liens; and this being true, whether it was worth while thereafter to torture the statute to wring from it an additional but subordinate lien in favor of some one else.

Respondent has no knowledge, information or belief as to the number of bonds now outstanding against said company, and will require complainant to prove the number held by him as claimed, and to identify them. Respondent admits that said McMinnville and Manchester Railroad Company has paid neither interest nor sinking fund, and that the State has paid no interest from January, 1876, to the present time.

Respondent denies that either the company or the State ever conceived the project of avoiding the liabilities of the former or of enabling the State to reduce her unsecured debt at the expense of the holders of her internal improvement bonds.

Respondent denies that it was ever supposed by the Legislature that the lien on the railroads was other than the absolute property of the State. This claim on behalf of the State has been asserted in almost every act relating to the subject of State aid to railroad companies passed since the incorporation of the Winchester and Alabama Railroad Company.

Respondent admits that Exhibit D to complainant's bill is a true copy of the Acts of the General Assembly which it purports to give in relation to the sale of the roads, but insists, and will show, that these are not all the acts on that subject, but that the determination to sell said roads originated and was enacted as early as December 7, 1867, and not as complainant alleges on the 5th of July, 1870.

Respondent knows nothing of the number, residence, or names, of persons holding any of said bonds.

Respondent says that the said Winchester and Alabama Railroad Company, because of its failure to comply with the Internal Improvement Laws, and because it had made default in payment according to said laws, interest or sinking fund, was, by virtue of said laws, put into the hands of a receiver of the State, and afterwards, it may be, into the hands of other persons as such receivers, and was operated by said receivers.

Respondent further says that said road was operated by receivers as aforesaid at a great loss to the State and those interested; that it failed to pay expenses, and that it became necessary for the State to make some disposition of the same in order to prevent a ruinous loss.

The receivers appointed from time to time to operate the delinquent railroads accounted to the State alone, nor was any attempt ever made by any bondholder of the State to hold any of them accountable, nor has any such bondholder ever manifested any concern as to who was appointed receiver of any road, or ever complained of the management of any receiver, though it is perfectly notorious that divers of said receivers were guilty of gross mismanagement, if not of even worse.

Any surplus in the hands of any receiver has always been appropriated by the State to its own

uses, but no complaint has ever been made of this by any bondholder, nor has any attempt ever been made to reach the funds in any receiver's hands, though the State at the time made default in payment of the interest on the bonds issued to this particular road, among others.

When the receivers did not realize enough to pay the operating expenses of their roads and to keep them in safe condition, it was notorious that the State would frequently make large appropriations of additional bonds to make up the deficiency, thereby increasing the incumbrance on the roads;—yet no bondholder ever manifested the smallest concern at anything of this kind.

Respondent says that the State of Tennessee was in good credit before 1861-2, and that her bonds sold readily in the markets at par; that during the war the State paid no interest on her bonds, and the railroads no portion of the Sinking Fund or interest; that few if any of the roads were during this time operated by the companies or receivers, but that they were used by the military forces of the contending parties.

Respondent further answering says that the State, at the conclusion of the war, found her interest unpaid, and many of the railroads to which she had given aid, hopelessly insolvent, without rolling stock or other means of operation; and that the respective companies were unable to mend their fortunes or improve their condition. Many railroads thus situated fell into the hands of the State which, to meet the emergency, appointed receivers, gave further aid, although her bonds were at a large discount, and did all she could, in every department of the government, to relieve these roads; but all these efforts were futile, and the State had no alternative but to sell said roads. Not a single road in the State that was put in the hands of a receiver (and there were

fully a dozen,) paid its expenses, and all were run at an immense loss. The respective companies could not operate them except at a loss. The interest on the State debt was accumulating annually; and the State had been forced to fund the same, amounting to many millions, and thus to swell the principal debt. It was under this condition of distress that the State was compelled to make sale of her roads. The sale was not made for the wicked and fraudulent purpose imputed to her in the bill. Respondent denies that the State, in instituting judicial proceedings against said roads to have a sale made of them, acted with any intent to injure or impair the rights of complainant or any other bondholder; she sought thereby to discharge herself of her debts, not to release any liens the bondholders might have. To have held said roads longer would have been suicidal; to have ceased to operate them would have been to connive at and voluntarily permit their total loss. The Legislature hoped, and her best citizens expected, that the sales of the roads would enable her to take up a large number of her bonds, and thus prevent the accumulation of interest. The roads did sell for nearly or quite nine millions of dollars, payable in bonds, which were cancelled; and no road would now bring, or would at any time since have brought, as much as it sold for at said sale.

Respondent denies that the project of treating the lien as the absolute property of the State was conceived at this time. Such was the conception of the legislatures that enacted the original law and its amendments, and respondent might add, of ninety-nine if not indeed of a hundred per cent. of all who had thought about the matter. The State, nowhere in the act, is denominated a trustee for the benefit of the bondholder. She is recognized everywhere as *the lien holder;* and such was the contemporaneous and subsequent understanding.

Respondent says that so far from its ever having been conceived that the bondholders had any lien, the latter idea originated only after the State stopped payment and allowed herself to be presented as likely to repudiate, and countenanced the notion that the entire debt of the State might be put upon the railroads, and the people exempted from its payment.

Respondent admits that this view has met with some individual and official favor in the State not wholly unexpected, and complainant may find some comfort in this fact; and possibly some persons have by this time persuaded themselves, if not others, that such has been *their* opinion all along.

Respondent denies all the insinuations of fraud or fraudulent projects or conceptions on the part of the State in selling said roads as she did.

Upon the theory now put forward by complainant, that the State was but a trustee for the benefit of the bondholders, she could have done no less. Here were a dozen railroads or more, to which she had before the war advanced her bonds amounting to many millions of dollars, to which, they being crippled and broken down by the war, and otherwise, she applied the statutory remedy of receivers; called to her aid the stockholders and directors; in some cases tried leases; advanced millions more —a thing which as trustee she was not bound to do; and when all her efforts failed she had but one alternative left—either to allow the property to waste and go to ruin, or to sell it.

In the original acts under which the bonds were issued, she had preserved her right to legislate further, so as to save herself from loss. The time had arrived when it became absolutely necessary to exercise this right, not only to save herself in fact, but to make this vaunted security available, and prevent its waste and destruction. Respondent says that it

was under these circumstances and conditions that the State passed the several acts looking to a sale of said roads.

Respondent admits that under said acts a bill was prepared and filed in the Chancery Court at Nashville, January 20, 1871, against the delinquent railroad companies and the other persons mentioned therein, and says that the Winchester and Alabama Railroad Company was made a party thereto, and that publication was made for the bondholders and other unknown or non-resident parties, in the mode usual in equity cases; that the cause proceeded to a final hearing, and a sale was made of said road on the —— day of November, 1871, at the sum of $————, payable in bonds of the State of Tennessee; and that the same was purchased by the stockholders, who shortly thereafter sold the same to the Memphis and Charleston Railroad Company, which, after holding and operating the same for several years, sold the same to the respondent.

Respondent here files as a part of this answer, a perfect copy of said record, marked Exhibit X, and pleads and relies upon the same.

Respondent does not feel called upon to answer the criticism of complainant upon said proceedings, much of which has no application to this case.

The Chancery Court at Nashville was one of the regular tribunals of the State, and respondent submits whether the State may not institute litigation in her behalf at any point within her limits.

But respondent further submits that it was clearly within the reservation of the right of further legislation for the protection of the State's interest in the railroads, to annex a power of sale to her statutory mortgages on said railroads; and that it was as clearly within said reservation to provide for making the sale through any selected agency, wherever situated; and that obviously the most appropriate point was the capital of the State.

Respondent suggests that a summary mode of sale might have been provided for, as is not unusual in cases of mortgages of realty, after due advertisement in some newspaper, and that neither the point at which the advertisement, nor that at which the sale, should be made, needed to be restricted to any of the counties traversed by the particular road; but that the capital of the State was obviously the most appropriate point for both advertisement and sale, irrespectively of the locality of the road. But it was more equitable to provide, as was done, for a sale through the instrumentality of the Chancery Court at the capital of the State, after proceedings in which all claims might be preferred and passed upon, the fullest publicity being given to such proceedings, by advertisement and otherwise, and the time involved therein being ample for all persons to have full opportunity to appear who might imagine themselves to be concerned in interest.

In a word, respondent would point out that the right being clear for the State, under the reservation aforesaid, to annex a power of sale to her statutory mortgage, the instrumentality, and the proceedings to effect the sale, including the locality thereof, were obviously incidental to the power itself.

Respondent admits that the presiding Chancellor had, before said proceedings were commenced in said court, expressed, by endorsement upon the back of a manuscript opinion prepared by a distinguished lawyer of Alabama, his opinion that the State had the sole lien upon the railroads; but he was not at that time the attorney of the railroad company with reference to which said opinion was expressed, nor was he before or afterward; nor was said railroad company a party to said suit subsequently; nor was said opinion prepared to be distributed in Tennessee; nor was it distributed in said State. It had been prepared by an Alabama lawyer,

and sent to Ed. Baxter, the attorney of said company at Nashville, to be examined by him, and such other lawyer as he might choose to submit it to, and then to be forwarded to New York, to distinguished lawyers resident in that city, who had been called upon to examine the question of the bondholders' lien, and to determine the priority of a mortgage which the company proposed to execute, and did execute, and with the proceeds took up the State's debt against the same. Neither respondent nor any of its officers ever saw said opinion, and they do not believe that any member of the Legislature ever saw the same, as it was published only in pamphlet form, and the number of copies was very limited.

To show conclusively that said opinion did not operate upon the mind of the Legislature, long before it was given, on the 7th of December, 1867, the State had passed an act, which is quoted in the preamble to the act of July 5, 1870, set out in Exhibit D to complainant's bill, "empowering the Governor, Secretary of State and Comptroller, in their discretion, upon the failure of the railroad companies mentioned in the act for two consecutive years to pay the interest that may accrue upon the bonds loaned to them severally, to sell the railroad track, railing, rolling stock, etc."

Respondent says that all of the acts passed by the Legislature to sell said defaulting roads, commencing with the act of December 7, 1867, including the act of July 5, 1870, and the act of December 21, 1870, were passed in pursuance of the right secured to the State under the original act, to enact thereafter all such laws as should be deemed necessary to protect her interest, and to secure her against loss in consequence of the issuance of bonds. The State was left to determine what enactments were necessary to protect herself. She did not limit her-

self to any particular enactment. As the original act had given her the right to appoint receivers in case of default, the right she reserved must have been something more. Even if complainant and the other bondholders had liens as claimed, and the State was but a trustee, still by virtue of this law the State was empowered to act with the trust property as she deemed necessary to protect her interest, and to secure herself against partial or total loss.

Respondent is at a loss to conjecture for what this reservation was intended, if not for the purpose indicated herein. So, that even if complainant had a lien originally, the very act which gave it empowered the State, if it were deemed necessary, to pass an enactment to secure herself as the payor of the bond, and subordinated complainant's lien to the State's subsequent necessities.

Respondent says that so far from the State's having been actuated by the motives ascribed to her by complainant, the report of the Comptroller shows that to aid and help the defaulting railroad companies, after the close of the war, she issued to them bonds as follows:

Edgefield and Kentucky	$ 525,000
Nashville and Northwestern	1,767,000
Memphis, Clarksville and Louisville	540,000
McMinnville and Manchester	400,000
Winchester and Alabama	856,000
Southwestern	503,000
Knoxville and Kentucky	2,150,000
Knoxville and Charleston	816,500
Cincinnati, Cumberland Gap and Charleston	1,241,000
Rogersville and Jefferson	226,000
Total	$8,024,500

As before stated, on the theory of complainant, that the State was a trustee for the bondholder (upon which footing she was not bound to uphold and support the trust property by additional aid) it must be marvelous that she made these large advances. And she did more: she funded twice the unpaid interest due on the bonds she had issued before the war to the companies mentioned above, as well as the interest on these bonds issued since the war, making many millions more, besides making two payments of interest on each. Never did a mere trustee make such large investments to preserve the trust property for another.

The State literally exhausted herself in her efforts to preserve these railroads, and she sold them only when she could no longer hold them.

Certainly, complainant was not aware of these facts when he charged the State with concocting a fraudulent and dishonorable scheme to injure the bondholders.

If the Court should hold that the State was a mere trustee, yet if, under the enlarged powers she reserved to legislate in the future, she expended prudently and in good faith large sums to preserve the trust property, then she had the right to reimburse herself out of the proceeds of the sales; and certainly, in order to prevent waste and loss to said property, she had the right to sell the same as she did.

Respondent says that the State of Tennessee is a necessary party to the bill of complainant, being interested in the subject matter of the suit. If complainant desires a receiver, the act under which he claims points out the mode of obtaining the same, and is his exclusive remedy, unless he can show by proper averments that officers of the State whose duty it was to put in force the statutory remedy cannot be sued in this case, or have been applied to

in the mode pointed out in the statute; respondent submits whether the averments of complainant on those points are sufficient in law to give this Court jurisdiction.

Respondent, further answering, says that the Winchester and Alabama Railroad Company did receive bonds to the amount of $————under the act of December 7th, 1867, and that by virtue thereof it became amenable to the section of said act, to the effect that any railroad company receiving bonds thereunder and then failing to pay the interest thereon for two consecutive years, should be sold; and said company did fail to pay interest as required, and thereby became liable to be proceeded against for the entire indebtedness.

As respondent has not indicated what bonds he holds, so that defendant can trace or identify them, or ascertain whether they were issued under the original act of 1851-2, or that act as modified before the issuance, or whether or not they were issued in aid of a bridge, which fact, complainant insists, will vary the alleged lien as to the property upon which it is claimed to exist, respondent asks that complainant be required either to file his bonds or give such particular description of them upon the records of the Court as will enable it to ascertain how these matters are.

Respondent further answering would show that, as it is informed, complainant is, and has been, the secretary of an association in the City of New York representing the great bulk of the bonds of the State of Tennessee, and that he and the said association have been perfectly familiar with the claim of said State to the exclusive benefit of said lien, as evidenced by nearly every statute upon the subject of State aid to internal improvements. It was notorious, and was well known to them, that for several years

prior to the actual sale of the delinquent railroads, it was the intention of said State to enforce its lien, claimed exclusively as aforesaid, by a sale of said roads. From the passage of the act of February 25, 1869, to the sale of The Winchester and Alabama Railroad in November, 1871, nearly three years elapsed, during which divers acts were passed in furtherance of this intention, creating a commotion with which the entire railroad world was astir. The proceedings to effect a sale of the delinquent railroads were notorious, and were well known to complainant and his associates. They were well aware, as was every body else even remotely interested, that in consequence of the purchases of said roads, to be paid in Tennessee bonds, the bond markets in New York and elsewhere were greatly excited,—and that immense fluctuations occured in the prices of Tennessee bonds—in a short period some $9,000,000 of such bonds being purchased by respondent and others in open market with the avowed purpose of using them in payment for said railroads, including The Winchester and Alabama Railroad,—such payments being claimed to be in full discharge of the lien of the State of Tennessee.

It was notorious, and perfectly well known to complainant and his associates, that the purchasers of the delinquent railroads including the purchasers of The Winchester and Alabama Railroad, were claiming to have purchased the same *free from every incumbrance*, and that in order to raise the means wherewith to procure the necessary State bonds to pay for their purchases, they were issuing their own bonds, *purporting to be first liens* upon the purchased roads,—the amount of such railroad bonds so issued being some $20,000,000, which were sold in open market mainly in New York City, this respondent subsequently issuing $320,000 of its bonds to said Memphis and Charles-

ton Railroad Company in payment for said Winchester and Alabama Railroad, and for The McMinnville and Manchester Railroad, also purchased from it by respondent, said bonds being secured by a mortgage on said roads so purchased by respondent, and purporting on their face to constitute a first lien thereon, and being shortly afterwards sold in open market by said Memphis and Charleston Railroad Company, and purchased by divers parties *bona fide* upon the faith that they were such liens, and being now outstanding in the hands of *bona fide* purchasers and owners.

The purchasing companies, as was notorious, and well known to complainant and his associates, went into possession of their purchases, claiming them free of every incumbrance; and, finding them in wretched condition, expended enormous sums in repairing them, and they have since been at great expense in developing their business.

Yet, down to the commencement of this suit,—some ten years after the passage of the act of February 25, 1869,—not a single bondholder of the State of Tennessee ever took any step, or uttered any word, showing that he supposed that he had the smallest concern in any of the foregoing matters; and respondent insists that, other questions aside, after such laches, complainant should not now be heard to set up this stale and discredited demand.

And now having fully answered, respondent prays to be hence dismissed with costs.

EAST & FOGG,
R. McP. SMITH, } *Solicitors.*

1

UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

In Equity.

2

CALVIN AMORY STEVENS, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the Winchester and Alabama Railroad Company,

versus

3

THE WINCHESTER AND ALABAMA RAILROAD COMPANY, and THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILROAD COMPANY.

The repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of 4

5 the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable Court shall direct; and humbly prays as in and by his said bill he hath already prayed.

6 E. L. ANDREWS,
Solicitor for Complainant.

7

8

UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT—MIDDLE DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS and JOHN T. TERRY, on behalf of the holder of Internal Improvement Bonds of Tennessee, issued to the WINCHESTER and ALABAMA RAILROAD COMPANY,	In Equity.
versus	
THE WINCHESTER AND ALABAMA RAILROAD COMPANY *et al.*	

To the Honorable the Judges of the Circuit Court of the United States for the Sixth Judicial Circuit and Middle District of Tennessee:

The Petition of John T. Terry respectfully shows to your Honors:

That your petitioners are owners and holders of Internal Improvement Bonds, issued on account of the Winchester and Alabama Railroad Company for the construction and equipment of its said road.

Your petitioner's said bonds are identified and numbered according to the description in the bill in this suit, and have the like number of overdue and unpaid coupons attached thereto. The schedule hereto attached, and prayed to be taken as a

part of this petition exhibits their ownership and holdings of said bonds.

Your petitioners likewise constitute a majority of the Committee of Tennessee bondholders, representing (22) twenty-two owners and holders of Internal Improvement Bonds of Tennessee, issued to the Winchester and Alabama Railroad Company, owning and holding (56) fifty-six bonds, issued to said company by the State of Tennessee.

Your petitioners desire to unite in the prosecution of the bill herein and to be joined as co-complainants according to the frame of the suit and the course and practice of this Court, with leave to amend the title and formal allegations of the bill to conform to this petition. A copy of said amendments is hereto attached.

And your petitioners accordingly pray for the foregoing relief and such other order as may be appropriate in the premises.

EDWARD L. ANDREWS.
Solicitor and of Counsel for Petitioners.

UNITED STATES OF AMERICA, *Southern District of New York*, } ss.:

On this 19th day of August, A. D. 1879, before me personally appeared John T. Terry, who being duly and severally sworn, says, each for himself, that the matters and things stated in the foregoing petition are true, so far as the same are stated of his own knowledge, and so far as stated on information and belief, he believes them to be true.

WILLIAM H. DE LANCY,
[L.S.] *Notary Public,*
Westchester County.
Acting in New York County under and by virtue of Chapter 807, of the Laws of 1873, of the State of New York.

UNITED STATES CIRCUIT COURT.

SIXTH JUDICIAL CIRCUIT.

MIDDLE DISTRICT OF TENNESSEE.

[*In Equity.*]

CALVIN AMORY STEVENS and JOHN T. TERRY, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the WINCHESTER and ALABAMA RAILROAD COMPANY,

versus

THE WINCHESTER AND ALABAMA RAILROAD COMPANY *et al.*

On the foregoing verified petition, and on motion of EDWARD L. ANDREWS, Solicitor for Complainants,

It is Ordered, That John T. Terry be, and the same are hereby admitted as complainants in this suit, and the formal amendments attached to the said petition are hereby allowed.

(Sgd.) W. STRONG, *J.*

AUG. 20, 1879.

Middle District of Tennessee:

I, LEWIS T. BAXTER, Clerk of the Circuit Court of the United States, for said district, do hereby certify that the foregoing is a true copy of an order entered and filed in the above-entitled cause, together with the petition of John T. Terry, also filed therein, as the same appears of record in my office.

Witness my hand and the seal of said Court, at Nashville, in said district, on this the 30th day of August, A. D. 1879.

[L.S.]

LEWIS T. BAXTER,
Clerk,
By E. R. CAMPBELL,
Deputy Clerk.

CIRCUIT COURT OF THE UNITED STATES.

SIXTH JUDICIAL DISTRICT,

MIDDLE DISTRICT OF TENNESSEE.

[*In Equity.*]

CALVIN AMORY STEVENS and JOHN T. TERRY, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the WINCHESTER & ALABAMA RAILROAD CO.

versus

THE WINCHESTER & ALABAMA RAILROAD CO., and the NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY CO.

Amendments to Bill.

On page 17, at the end of the fourth paragraph after the word "Tennessee" insert "Your orator, John T. Terry, is also the owner and holder of (7) seven of said bonds, and they are of like description and character with those above set forth."

On the first line of the fifth paragraph of the same page insert the words Stevens and Terry," and after the word "likewise" on the same line insert the word "respectively."

On the second line of the same paragraph after the word "bonds" insert "alleged to belong to them respectively."

On the thirty-fourth line of the seventeenth page, eight lines from the bottom of the page, insert the following: "The said bonds are numbered and identified respectively as follows: those belonging to John T. Terry are numbered 7518, and is a white bond, series B; number 2006 is a green bond, series B; and numbers 3536, 3689, 4078, 7667 are green bonds, series "No letter."

At the end of the word "orator" whenever it occurs in the bill add the letter "s"; and after the name "Stevens" add the following "John T. Terry."

Make the pronoun and verb to which the word "orators" relates plural instead of the singular number.

EDWARD L. ANDREWS,
Solicitor for Complainants.

United States Circuit Court, 1

MIDDLE DISTRICT OF TENNESSEE.

IN EQUITY.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY, IN THE CASE OF THE WINCHESTER AND ALABAMA RAILROAD COMPANY, 2

ads.

CALVIN AMORY STEVENS AND ANO.

3

Answer to Amended Bill.

EAST & FOGG,
R. McPHAIL SMITH,
Solicitors and of Counsel. 4

IN THE

Circuit Court of the United States

FOR THE MIDDLE DISTRICT OF TENNESSEE.—SIXTH JUDICIAL CIRCUIT.

IN EQUITY.

The answer of the NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY, in the case of The WINCHESTER AND ALABAMA RAILROAD COMPANY, defendant, to the bill of complaint, as amended, of Calvin Amory Stevens and John T. Terry, on behalf of themselves and the other holders of the Internal Improvement bonds issued by the State of Tennessee to the Winchester and Alabama Railroad Company, who may come in and contribute to the expenses of the litigation against the said defendant.

This defendant, answering the said bill as amended, here repeats and makes part of this answer the original answer which it heretofore filed to the said bill before the amendment thereof as such bill was filed by the said Calvin Amory Stevens, without joining the said John T. Terry, the now co-complainant, and a printed copy of which original answer is hereunto annexed, and everything in the said original answer contained, as fully and with like effect as if such original answer and everything therein contained were set forth at large and embodied in this answer, and, in addition thereto, this defendant hereby makes the like allegations, statements, objec-

tions, defences and claims respectively as to and in respect of and against the complainants in the bill as now amended, and each and every of them, and as to and in respect of the Tennessee State bonds and the coupons thereof by the amended bill alleged to be held or owned by the complainants respectively, or by any of them; and as to and in respect of all former owners or holders of such bonds respectively, or the coupons thereof; and as to and in respect of all and each of the claims asserted in the bill as amended by or on behalf of the complainants respectively, as in the said original answer filed by this defendant were contained, as to or in respect of or against the said original complainant, Calvin Amory Stevens, or as to or in respect of the Tennessee State bonds or the coupons thereof, in the said original bill alleged to be owned or held by him, or as to or in respect of any former owner or owners of such bonds or coupons respectively; or as to or in respect of all and each or any of the claims asserted by the said Calvin Amory Stevens, in his said original bill; and this defendant hereby repeats and makes the said original answer, and everything therein contained, applicable to the present complainants and each of them, and to the bonds and coupons alleged to be owned or held by them respectively, and to the alleged claims and causes of suit now alleged by the complainants, or any of them, as fully and completely as the same were by said original answer applicable to said Calvin Amory Stevens and the bonds and coupons alleged to be owned or held by him, and the alleged claims and causes of suit which were set forth in his said original bill.

And this defendant, further answering the said bill, as now amended, makes additional answer thereto as follows:

This defendant has no knowledge nor information that the complainants, respectively, or any or

either of them are, or at the time of the filing of the bill, or of the amendment thereof, by bringing in the new complainant, were the owners or holders of the bonds of the State of Tennessee issued to the Winchester and Alabama Railroad Company, or any of the same, or of the coupons thereof, or any of the same, which in the bill, as amended, are alleged to be held or owned by the complainants, respectively; and this defendant is wholly ignorant and uninformed of the truth of the allegations of the bill, as amended, in this behalf, save that it has been informed, and believes, and therefore avers, that the complainant, Stevens, was not at the time of the filing of the bill, nor at the time of the amendment thereof, and is not now the owner or holder of the said bonds and coupons which he claims to own, nor of any of the same; and that the other complainant, at the time of his uniting in this suit, was not, and now is not the owner or holder of said bonds and coupons, which he claims to own, nor any of the same; and these defendants deny each and all the allegations of the bill relating to the alleged ownership or holding by the complainants, respectively, of said bonds and coupons, and require the complainants to make strict proof thereof.

And this defendant further answering says, that before and at the time of the enactment of the said Internal Improvement law of February 11th, 1852, it had been ascertained by experience, and was at said time well known and understood and perfectly notorious, both in Tennessee and in New York, that Tennessee State bonds, pure and simple, resting upon the faith and credit of the State and upon that alone, and not secured to the holder by any lien upon a railroad or upon anything else, had a better credit and brought and would bring a higher price in the market, than the bonds of Tennessee railroad

companies, secured by mortgage liens upon their railroads, and further secured by the endorsement or guaranty of such bonds by the State of Tennessee, and that at that time the price in the market of the Tennessee railroad companies' mortgage bonds, endorsed by the State of Tennessee under legislative acts antecedent to the said Internal Improvement Act of February 11th, 1852, of which endorsed bonds there was a considerable amount outstanding, was materially less than the market price of Tennessee State bonds pure and simple, resting alone upon the faith and credit of the State, and in respect of which there was no lien, or pretence of a lien upon a railroad or upon anything else, and that the said Internal Improvement Act of February 11th, 1852, was shaped as it was with the design and purpose of gaining in the negotiation of the bonds issued thereunder such advantage in price of Tennessee State bonds, pure and simple, and for which the State was primarily and alone liable, over railroad mortgage bonds on which the State was or should be liable as surety; and that the actual sale and negotiation of such bonds by the Winchester and Alabama Railroad Company and by the other railway companies respectively, under said Internal Improvement Act of February 11th, 1852, and under the amendments thereof, from time to time, were made under and in conformity with the idea, design, and purpose herein last above stated, and the purchases and takings thereof were in like conformity, and with the like idea, and said bonds upon the original sales and negotiations thereof by the Winchester and Alabama Railroad Company, and by the other railroad companies receiving bonds under said act respectively, were accordingly sold and purchased upon the understanding that they were Tennessee State bonds, pure and simple, for which the holder was to look to the State, and to it

alone, and not bonds primarily payable by a railroad company, and for which the State was to be regarded as a surety, nor bonds in any way secured to the holder by or connected with a railroad lien or by any responsibility of a railroad company for the payment thereof to the holder, and said bonds accordingly commanded and brought in the market the aforesaid advantage in price borne by Tennessee State bonds, pure and simple, for which the State was primarily and alone liable, over railroad mortgage bonds, upon which the State was surety, and that all subsequent purchases of and dealings in said bonds were upon the same understanding and footing, and that the idea of said bonds being anything else than Tennessee State bonds, pure and simple, or that there was any personal liability of the railroad companies to which said bonds had been lent by the State, for the payment of either the interest or principal of such bonds to the holders, or any lien upon the railroads respectively, in favor of or in any way available to or for the benefit of the holders of such bonds, was not entertained nor conceived by the complainants or by any of the holders of the bonds they now claim to own, nor by any other holders of Tennessee State bonds issued under such Internal Improvement Acts of February 11, 1852, until very shortly before the commencement of this suit.

And this defendant, further answering, says, that as early as the year eighteen hundred and sixty-five, the State of Tennessee made a settlement with the Louisville & Nashville Railroad Company for and in respect of the entire amount of its indebtedness to the State for and in respect of the principal and interest of the Tennessee State bonds which had been loaned to said company under the Internal Improvement Act aforesaid, by receiving, in payment and satisfaction of such indebtedness,

Tennessee State bonds at par, not being the identical bonds which had been loaned to that company, unless in so far as some small amount of those bonds may have been accidentally included in the bonds so received in settlement, and thereupon giving to said railroad company a full release and discharge for such indebtedness, and of the lien therefor, under the Internal Improvement Act, and in such transaction the State of Tennessee distinctly asserted or assumed the existence of the State's full, complete and unqualified ownership and control of such debt and lien, with the right thus to deal with and discharge the same, and the non-existence of any right on the part of the holders of the State bonds, which had been loaned to said railroad company, to interfere with or question or complain of the same, the State of Tennessee then being and for several years having been in default in respect to the payment of the interest on its said bonds as well as upon its other indebtedness. The acts and proceedings of the State of Tennessee, under which this settlement was made with and discharge given to the Louisville & Nashville Railroad Company, were open, public and notorious, and included joint resolutions of the legislative bodies of the State and proceedings of a Board of State officers, all distinctly proceeding upon such basis of complete ownership, control and right of settlement and discharge vested in the State, and of non-existence of any right or interest of the State bondholders, and the same covered a period of many months before the settlement was actually effected and the discharge given; and during all this period the assertion or assumption of the existence of such right and power on behalf of the State and the State's intention to exercise it, were open, public and notorious, as well in New York and elsewhere where Tennessee State bonds were held, as in Tennessee, and were well known to

and understood by the great mass of Tennessee State bondholders, including the complainants respectively, and the then holders of the bonds which they now claim to own, and neither the complainants, nor any of them, nor any holder of Tennessee State bonds ever raised or intimated any objection to, or denial or question of such right or power on the part of the State, or gave notice of, or asserted, set up, or even intimated or suggested that the lien upon the railroads under the Internal Improvement Acts was one in which the State bondholders had any right, title or interest, but they each and all willfully and knowingly refrained from so doing, and stood by and saw the said transaction take place without objection, and fully and completely acquiesced in, admitted and assented to the claim, assertion and exercise by the State of such right and power on its behalf, thus to control, deal with and discharge such debt and lien, and after such non-notification of claim and acquiescence in, and practical recognition of and assent to such claim, right and exercise of power by the State, and non-existence of any interfering right or title, on their part, of the State bondholders; and after the many years of subsequent delay and acquiescence, the holders of said Tennessee State bonds, including the complainants respectively, are now equitably estopped from setting up the contrary construction of the Internal Improvement Act which the complainants now assert.

And this defendant hereby sets up and makes part of this answer with like effect as if here recited at large the Act of the Legislature of the State of Tennessee, entitled, "An Act to fund the past due bonds and coupons of the State, and to sustain the credit thereof," approved March 17, 1873.

And this defendant further says, that the complainants respectively, and the respective holders at

the time being of the bonds which they now claim 33
to hold, as well as the other holders respectively of the Tennessee State bonds, issued and loaned under the said Internal Improvement Act of February 11, 1852, and its amendments respectively, from time to time, to the Winchester and Alabama Railroad Company, as likewise to the other railroad companies respectively, funded respectively the past due coupons of their said bonds, under and in pursuance of said Act of March 17, 1873, and received new State bonds therefor, as by said Act provided, 34
and likewise registered, or procured to be registered, under and in pursuance of such Act of March 17, 1873, the said Internal Improvement bonds of the State of Tennessee, so by them held, and accepted and assented to said Act of March 17, 1873, and that such action on their part respectively, was with full notice and knowledge of the previous Acts of the Legislature of Tennessee, before referred to herein, and in the original answer of this defendant herein, and particularly the said Acts of March 35
20, 1860, February 25, 1869, January 2, 1870, July 5, 1870, December 22, 1870, and November 17, 1871, and of the several acts and proceedings had in pursuance thereof, including the proceedings in Chancery under which divers of the Tennessee railroads, upon which liens were held, under said Internal Improvement Act, including the Winchester and Alabama Railroad, had been sold out for prices payable in State bonds not issued to the railroads whose roads were thus sold, and with full 36
notice and knowledge that as to the said Winchester and Alabama Railroad, as likewise, in respect of nearly all the other railroads upon which liens had been created under the said Internal Improvement Act and its amendments from time to time, the State had made settlements for such indebtedness, and discharged or assigned

the said lien therefor, or sold out the roads as aforesaid in enforcement of such lien, upon the basis and assumption of such lien being wholly owned by and controllable by the State at its pleasure, and that the State bondholders had no right or interest therein, and that by such transaction the State had, before such funding of coupons and registration of the bonds, become, as between itself and the railroad companies or their assigns, bound to pay or discharge such State bonds originally loaned to the railroad companies, as the proper debt of the State, without any recourse over against the railroad companies or their roads in respect to the same, and that by such registration of the bonds and funding of past due coupons, under and in pursuance of said Act of March 17, 1873, the said complainants respectively, and the said other holders of Tennessee State bonds, which had been issued under the Internal Improvement Act, with its amendments from time to time, recognized, treated, and dealt with the State as its sole debtor for the principal and interest of such bonds, and made new bargains and agreements with the State in respect of the same varying the original terms, and acquiesced in and assented to the practical construction which had been put upon the Internal Improvement Act in respect of the lien and its discharge as aforesaid, and the settlements and discharges which had been made by the State as aforesaid, and that by reason of the premises aforesaid the complainants respectively and the said other holders of Tennessee State bonds are estopped and precluded, if otherwise they would not be, from impeaching or setting aside such settlements and discharges and sales, and particularly the said sale, made of the Winchester and Alabama Railroad, in enforcement of the State's lien as aforesaid, and from setting up or asserting as against this de-

fendant or its property any such claims as are set 41
up or asserted by the complainants in this suit.

And in addition to the matters alleged hereinbefore and in the original answer of this defendant herein, relative to the practical construction placed upon the Internal Improvement Act of 1852 by the State, the railroad companies and the State bondholders, in respect of the character and ownership and control of the statutory lien upon the railroads, created under or in virtue of said act, and relative to the acquiescence and consent of the complainants 42
and the former holders of the bonds they claim to own, and the other holders of Tennessee State bonds issued under said Internal Improvement Act, and its amendments from time to time, and as to the several acts, doings, and proceedings of the State in respect of such lien, and the settlement and discharge of such debt and lien, these defendants further answering say that the complainants respectively, and the holders at the time being of the bonds, which they now claim to own respectively, 43
and the other holders respectively of the Tennessee State bonds, issued under such Internal Improvement Act, and its amendments from time to time, have in various other ways acquiesced and concurred in the practical construction placed by the State as aforesaid upon the said Internal Improvement Act, in respect to the character, ownership and control of the statutory lien created thereunder, and in the acts and proceedings of the State by which it has settled with the rail- 44
road companies for the indebtedness, and released and discharged or transferred the statutory lien therefor, or sold out their roads under the lien, and particularly that after many of such settlements and discharges and sales had taken place, and with full notice and knowledge thereof, not only have they respectively fully acquiesced in and as-

sented to the same, but some of the said State bond-
holders, and especially the complainants, or some of
them, have, in communications with the State offi-
cers or authorities, urged the making of further set-
tlements between the State and the railroad com-
panies, under and in pursuance of the said Acts of
1869 and 1870, and the discharge thereby of so much
of the railroad companies' indebtedness to the State,
and of the statutory mortgage lien therefor, upon
terms of payment in any State bonds at par, which
further settlements have accordingly been made and
discharges of the lien given accordingly, and
the complainants or the holders at the time being
of the said bonds, which they now claim to own,
and the holders of a great amount or proportion of
the other Tennessee State bonds issued under said
Internal Improvement Act, with like full notice and
knowledge as aforesaid, have, in other dealings of
the State, and communications with the State offi-
cers and authorities, recognized and treated their
said bonds as obligations of the State alone, and in
no respect liabilities of the railroad companies nor
liens upon their roads, and have accordingly entered
into negotiations with the State for the settlement
of such bonds and for the reduction and compromise
and extension thereof, as being debts of the State
alone and not of the railroad companies, and have
in other ways, the particulars whereof these defen-
dants have not as yet been able to discover, but
which, when discovered, they crave leave to give in
evidence, manifested acquiescence in and assent to
the aforesaid practical construction placed by the
State upon the said act, and the settlements and dis-
charges of such debts and liens and sales of the
roads made and given by the State as aforesaid.

EAST & FOGG,
R. MCPHAIL SMITH,
Solicitors and of Counsel for Defendants above named.

IN THE

UNITED STATES CIRCUIT COURT,

For the Middle District of Tennessee.

IN EQUITY.

Calvin Amory Stevens, Eugene Kelly, John T. Terry and Peter Geddes, on behalf of holders of Internal Improvement Bonds of the State of Tennessee issued to railroads,

vs.

The Louisville & Nashville Railroad Company,

and

Fifteen other suits on behalf of bondholders, against Fifteen other Railroad Companies.

SOME OF THESE SUITS ARE PENDING IN THE EASTERN, SOME IN THE MIDDLE, AND OTHERS IN THE WESTERN DISTRICT OF TENNESSEE.

OPINION BY S. L. WITHEY, DISTRICT JUDGE, WESTERN DISTRICT OF MICHIGAN.

SEPTEMBER 25th, 1880.

These are suits in equity pending in the Circuit Courts of the United States for the Districts of Tennessee, brought by complainants on behalf of holders of Internal Improvement Bonds of the State of Tennessee against various railroad companies to whom the bonds were issued, to aid in the construction of their several

lines of railroads, and against all other persons interested.

They were argued together in April and May last at Nashville.

The object of the suits is to have a lien in favor of the bondholders declared and established upon the railroads of the several defendant companies, and a Receiver appointed for the collection of the accrued and accruing interest, the interest having been in default since July 1st, 1875. The principal is not due.

The plaintiffs' contention is, briefly, that the Acts passed by the Legislature of the State of Tennessee in 1852, to grant aid to the railroad companies by a loan to them of the bonds of the State, imposed a lien upon the railroads, as security to the holder of the bonds and to the State—payment to the holder would operate as indemnity to the State. Inasmuch as the State and the companies are in default in the payment of the interest since July, 1875, the bondholders by these suits seek to have a lien in their favor established upon the roads.

Statement.

The General Assembly of the State of Tennessee passed, February 11, 1852, an Act known as the "Internal Improvement Act of the State of Tennessee," extending aid to railroad companies by a loan of State bonds, the proceeds to be used in ironing and equipping the roads. Prior to the time of passing the Act, there had been issued State bonds for various purposes, of which above three and a half million dollars were outstanding. The State of Tennessee was now in good credit, her six per cent. bonds brought a premium in the money markets of the world, as did also, subsequently, her bonds issued to the defendant railroad

companies under the Act in question, and Acts amendatory thereof, which bonds are the subject of controversy in these suits. The scheme of internal improvement now adopted was to issue to each Company six per cent. bonds to the amount of eight thousand dollars a mile in installments—afterwards extended to ten thousand dollars,—the first when a section of thirty miles of road was completed ready for the ties, and the subsequent installments upon completion of each additional section of twenty miles; afterwards changed to ten miles. The bonds are transferable by delivery, run not less than thirty nor more than forty years from the respective dates of issue. The interest matures semi-annually, and, with the principal, is payable in New York. They were paid to the railroad company and old in open market without endorsement or guarantee. The State was invested by the terms of the statute with a lien upon each section of the company's road as soon as the bonds for that section were issued, and upon final completion of the road such lien was to attach to the entire road and its equipments. The company was to be incapable of creating any lien conflicting with that in favor of the State.

The amount of the lien claimed by complainants in behalf of such bondholders upon all the railroads is about fifteen million dollars. The litigation, however, affects the holders of between thirty and thirty-five million dollars of other mortgage bonds secured upon these roads and issued under authority of the General Assembly conferred in 1869–70 to enable the aided companies to repay to the State the bonds loaned to them. The holders of the last-mentioned bonds claim to have a first lien upon the roads, and appear in these suits, with the defendant companies, to contest the lien

claimed by complainants and their associate bondholders.

The interest of the State debt was in default from July, 1861, to 1866, during the Civil War, when the price of her bonds had depreciated in value to less than fifty per cent. of their face. The storm of war left the railroads of the State without money, credit or rolling stock, and their roads and bridges going to decay. The first Legislature of Tennessee, after the storm had passed, assembled in 1865, when the State and the railroad companies were alike in a condition of bankruptcy. Provision was now made by the State to fund all her over-due bonds and interest coupons outstanding into new bonds. In 1866 and 1867 the State issued additional bonds to some of these railroad companies to aid them to build bridges and repair their roads, the State reserving a lien and imposing terms and conditions like those in the act of 1852, but somewhat modified.

In 1869–70 none of the principal of the railroad aid bonds issued under the acts of 1852, or acts amendatory thereof, had matured, but now the General Assembly of the State, to enable the respective companies to repay any part of the principal of their indebtedness for bonds loaned to them, passed an act permitting payment in any of the outstanding bonds of the State.

To obtain money to purchase State bonds for surrender, they were severally authorized to issue mortgage bonds upon their respective roads and equipments corresponding in denomination with the State aid bonds, and deposit them with the Comptroller of the State, to be by him delivered to the company or its agent whenever, and as Tennessee State bonds were by the company surrendered and cancelled. These mortgage bonds were by law declared to be a first lien on the road and equipments of the company issuing them,

and as evidence to the purchaser the Comptroller was required to and did certify upon each bond that it was "secured by first mortgage."

Many of the companies availed themselves of this legislation, and under its sanction and authority an aggregate of between thirty and forty million dollars of such mortgage bonds were by the companies issued and sold, and are now outstanding.

Other railroad companies did not avail themselves of the provisions of the law of 1869–70. They continued to be in default as to the payment of interest, and as to payment annually into the sinking fund required by statute. Proceedings by the State were therefore commenced in the State Court of Chancery, and decrees of foreclosure and sale obtained.

At the sale the State was purchaser. These foreclosed roads were subsequently sold by the State and new companies organized. Payment by the purchaser was made to the State in any outstanding Tennessee State bonds at their face value, and the purchaser was invested with all the right and title of the State.

The State, as before stated, had funded her over-due bonds and interest coupons into a new bond under the law of 1865, and in February, 1870, another act was passed to again fund unpaid interest that had accrued on the public debt, together with the floating debt of the State, and all that might become due up to 1874. Holders of Tennessee bonds, including holders of internal improvement bonds issued to railroad companies, generally accepted the provisions thus made for retiring over-due interest coupons, as they had done under the act of 1865. The State of Tennessee however, again defaulted in her interest January, 1, 1875,

and subsequently openly repudiated her bonded debt, for the payment of which the faith and credit of the State were solemnly pledged.

The Statute.

The Internal Improvement Act of February 11, 1852, will alone be referred to, as it contains all the provisions necessary to be considered. The lien is declared by the third section which is as follows:

"That so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon said section so prepared as aforesaid, including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with the said lien or mortgage without a deed from the company, for the payment by said company of said bonds, with the interest thereon as the same becomes due."

The requirement, by section five, as to the payment of interest is, that fifteen days before it falls due the company shall deposit in the bank of Tennessee—the State's fiscal agent—

"an amount sufficient to pay such interest, including exchange and necessary commissions, or satisfactory evidence that said interest has been paid or provided for, and if said company fail to deposit said interest as aforesaid, or furnish the evidence as aforesaid, it shall be the duty of the Comptroller to report that fact to the Governor,"

who is immediately to put the road into the hands of a Receiver to operate it in behalf of the State until the default is made good, and then to surreuder the road to the company.

By the section,

"The Comptroller is authorized, and it is made his duty upon his warrant to draw from the treasury any sum of money necessary to meet the interest on such bonds as may not be provided for by the company as provided for in in this act, and the Comptroller shall report thereof to the General Assembly from time to time."

The requirement as to the payment by the company of the principal of the bonds by section seven is:

"That at the end of five years after the completion of said road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, and as between the State and said company, the bonds so paid in shall be a credit on the bonds issued to the company. And bonds so paid in and the interest accruing thereon, from time to time, shall be held and used by the State asa Sinking Fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be credited as aforesaid and cancelled. And should said company fail to comply with the provisions of this section, it shall be proceeded against, as provided in the fifth section of this act."

viz, as in case of failure to meet installments of interest.

It will be noticed that as these bonds were to be issued in installments at different periods, they would therefore fall due at different times.

The sixth section provides:

"That if said company shall fail or refuse to pay any of said bonds when they fall due, it shall be the duty of the Governor to notify the Attorney General of the district in which is situated the place of business of said company, of the fact; and thereupon, said Attorney General shall forth-

with file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by the Court, to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee against any loss on account of the issuance of said bonds, by ordering the said railroad to be placed in the hands of a receiver, ordering the sale of said road, and all the property and assets attached thereto or belonging to said company, or in such other manner as the Court may deem best for the interest of the State."

By section twelve,

"the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed necessary to protect the interest of the State, and to secure the State against any loss in consequence of the issuance of bonds under the provisions of this act; but in such manner as not to impair the vested rights of the stockholders of the companies."

What the parties claim.

Complainants contend that the statutory lien is to be regarded as an instrument of security taken for the benefit of the bondholders; or more fully stated, that the legislation and action of the State under it were effectual to fix upon the railroads respectively a lien not merely for the indemnity of the State of Tennessee, but also to secure the payment of its bonds to their holders; that the State became trustee of this lien for the benefit of the holder of the bonds, which lien inured to their benefit as *costius que trusent* of the State, by force of the express contract to that effect in the law creating the security, as well as by necessary legal implication from the relations of the parties, which no subsequent dealings between the railroad companies and the State could discharge. Again it is said:

"the first or primary object of the act was to compel each aided company to pay its debt directly to its true creditor, the lender on the bonds. This was effected by the usual and proper process, a lien pure and simple for the payment of the bonds upon the estate of each aided company enforcible in equity in case of default."

On the other hand defendants' answers state the opposing view thus:

"that the said statutory mortgage was taken by the State in its own behalf and for its own benefit, and not as trustee for its bondholders, and that said statutory mortgage was conditioned solely for the payment by the Company to the State of the company's indebtedness to the State for the bonds loaned to it, and in respect of both principal and interest such payment was conditioned to be made by the company to the State before the corresponding amount of interest or principal would become due or payable by the State to the holders of the State bonds; * * * that by the statute two entirely independent and distinct debts were created, one from the State to the bondholders upon its bonds payable to bearer, resting upon the faith and credit of the State, the other an indebtedness from the railroad company to the State for the amount of the State bonds loaned to it, and that the statutory mortgage was given to secure this latter direct obligation from the railroad company to the State, with which the bondholders had no connection or concern."

It is further said that whether the engagement of the company was to pay to the State or to holders of the bonds is not important, and that if under the terms of the act it shall be held that the companies were to make payment to the bondholders, such payment was to be merely in relief of the State from the ultimate performance of its obligation—but all the while the obligation of the State remained—was to be in exoneration of the State but did not modify its undertaking on the bond and created no privity between the bondholders and the company. That such an undertaking by the company would be to indemnify the State by payment of the

bond in its stead, and that the obligation was to the State alone, and one in which no one else had or was intended to have any legal or equitable interest, much less any direct participation and right of intervention or control. That the relation between the railroad company and the holder of State bonds was that merely of vendor and purchaser of negotiable securities, passing by delivery and without endorsement and therefore created no relation between them of debtor and creditor.

Opinion.

I cannot refrain from expressing personally and officially my acknowledgements for the complete and exhaustive arguments by learned and eminent counsel which distinguished the hearing and submission of these important cases. I approach their consideration with all the aid which the most consummate and elaborate arguments can afford. The opinion will not extend over all the debated ground.

Have the holders of internal improvement bonds, loaned by the State of Tennessee to a railroad company, under the act in question, any enforcible right by contract or otherwise in the statutory lien that is reserved to the State of Tennessee for the payment of the principal and interest of the bonds as they matured? Section three provides:

"That so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon said section * * * and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien * * * for the payment by said company of said bonds, with the interest as the same becomes due."

This section of the statute relates only to the first division of thirty miles, but the lien there declared is

by another part of the act applied and extended to each additional section of twenty miles as fast as completed, and finally to the entire road as security

"for the payment of all bonds issued to the company" (Sec. 4).

The lien upon the property of the company was effected by virtue of the statute upon the issue of the bonds by the State and their acceptance by the company. Unless an intention of the Legislature to secure the purchaser of the bonds can be implied from the act and the dealing of the parties, the claim of complainants to the relief asked in these suits rests upon a mere equity. There is no denial that it was the State of Tennessee which was invested with the lien, but it is said that she occupies the position of a surety holding security for the payment of the debt, which security the creditor—the bondholder—can upon default of the principal debtor—the railroad company—avail himself in equity; that default by the company and by the State in the payment of the interest having occurred, the State becomes and is a trustee of this lien for the benefit of the bondholder. It was the State and the railroad company that dealt together in this matter. The State dictated the terms upon which it would grant aid, and the company accepted those terms without reference to what the purchaser of the bonds would say or claim. The bonds were loaned by the State and passed over to the company to be sold for money to aid or accommodate the company. The bonds were accepted by the company upon the understanding and agreement: 1. That the state was invested with a lien upon the company's railroad and property to secure "the payment by said company of said bonds, with the interest thereon as the same becomes due." 2. That the inter-

est should be paid by the company to the financial agent of the State at least fifteen days before it should become due, or satisfactory evidence be produced that it had been paid or provided for; and 3, that the principal of the bonds should be paid by the company by means of a sinking fund in the State Treasury, created by the purchase and deposit therein of Tennessee interest bearing bonds, supposed to be adequate for the purpose of enabling the State to meet its bonds at maturity.

There is nothing in any of these stipulations out of which the relation of the State to the bondholder is changed from that of a principal debtor to a surety. Nor does it appear how the company becomes debtor to the bondholder in any degree whatever. There is no express promise on its part to the bondholder, nor is any contract relation implied between him and the company. Section three contains no language importing such promise. It declares merely that the State of Tennessee shall be invested with a lien for the payment of the bonds by the company. The State imposes the lien if its aid is accepted, and as a condition of the grant. The language may imply a promise by the company accepting the aid to pay the State, but there is no obligation of the company to pay the bondholder, resulting either from positive law or from contract express or implied.

The lien was clearly "reserved in favor of the State." It was the State of Tennessee that upon the issuance of the bonds was invested with the lien or mortgage without deed. No other lien could have priority over or come in conflict with the lien of the State. The company was to deposit the interest money and exchange with the State's fiscal agent at least fifteen days before it became due, or satisfactory evidence that the interest had been paid or provided. All the suits and proceed-

ings under the Act are given as remedies exclusively to the State. The State might have a decree and sell the road for non-payment of any bond. The bond was made by the State for the accommodation of the railroad company and was sold in open market, without any promise by the company, other than what is implied to the State by accepting the benefit of the Act.

There is no express declaration of trust on the part of the State. It is sought to raise a trust out of the language of the Act, and the principle is invoked applicable to a security given by a debtor to his surety conditioned that it shall be void if the mortgagor pays the debt on which the mortgagee is surety, viz: that in such case the mortgage will be held both as an indemnity to the surety and as a security for the debt; the surety being regarded in equity as trustee for the benefit of the creditor and as having no right to discharge or defeat the trust, unless it be to a purchaser for a valuable consideration without notice.

The rule is not questioned. But it is not conceived that this rule would control the express terms of a mortgage or other instrument of security, nor render wholly nugatory the effect of an express reservation of a right of disposition of the mortgaged property by the mortgagee as is provided in the statute under consideration.

It is not within the province of equity to import conditions into the mortgage. The conditions of this statutory lien were, that the company should deposit the interest money and exchange with the State's fiscal agent or furnish evidence of prior payment, and should also pay into the treasury the means of providing a Sinking Fund for the ultimate payment of the bonds. This dealing was to be with the State—as to the payment of the principal it must have been—as to the pay-

ment of interest it was optional with the company—and there being no express covenant by the company a compliance with the conditions named in the mortgage would discharge the lien.

We do not overlook a claim made by one of complainants' counsel, that the intention of the Legislature is to be ascertained by the language of the statute declaring the lien, but we think the statute must be construed together, and that the requirements put upon the mortgagor—the conditions of his mortgage—when read in connection with the declaration, many times repeated in the statute, that the lien is the lien of the State, should have great weight in determining the legislative intention. The meaning of the legislation is to be declared from the words and subject matter of the statute. It is the scope and meaning of the whole enactment, rather than the literalism of words and phrases that are to govern; the signification of the entire Act and not a single clause determines the intention of the law maker. Thus section six, considered with other provisions of the Act, is important as reserving to the State the right through proceedings in Court to sell the road, thereby discharging it from the lien imposed by the statute.

The fact that the State might discharge the lien in such way imports that there was no intention of the law makers to give a beneficial interest in the security to any one but the State. This view applies with peculiar force where the holder of the security is a State not amenable to the ordinary process of Courts.

This view of the effect of section six upon the construction as to legislative intent is not weakened but fortified by section fourteen, which declares that

"in the event any of the roads shall be sold under the provisions of the Act, it shall be the duty of the

Governor to appoint an agent for the State to attend the sale, and, if necessary to protect the interests of the State, buy in the road in the name of the State; and in case the State shall be the purchaser, the Governor shall appoint a Receiver who shall take possession of the road and property, and use the same as provided for in the fifth section of this Act, and said Receiver shall settle his accounts semi-annually with the Comptroller until the next meeting of the General Assembly."

This section imports three things at least as to a sale: 1, a third person may be a purchaser; 2, the State may be the purchaser; 3, that the purchaser obtains a title discharged of the lien. It is manifest that if a stranger buys he takes title freed from all liens imposed by the act upon the property, and there is nothing in the language of the section or in the act to indicate that the State, becoming purchaser, does not take the property equally free from such lien.

The Receiver appointed by the Governor is to take possession of the road and "use the same as provided for in the fifth section," that is, in like manner, viz.: "run the same and manage the entire road." This he is to do until the next meeting of the General Assembly, when by clear implication the future management or disposition of the road is left to legislative action.

The contract between the State and the company is that the State shall have a lien "for the payment by said company of said bonds," but it is nowhere required by the State, and therefore not assented to by the company, that the latter shall pay *to the bondholder*. It was urged that this language imports payment by the company to the only person then entitled to ask or enforce it. The language must, however, be understood to relate to other parts of the statute which prescribes specifically the manner of payment by the company, viz.: payment annually into the State Treasury of a sum to be employed as a sinking fund.

It is made optional, by section five, with the company, whether it will deposit the interest as it becomes due with the fiscal agent of the State or pay the same to the bondholder, and by section seven the principal was to be paid by setting apart annually after five years from the completion of the road a certain per centum of the amount of bonds issued to the company, invested in any bonds of the State and assigned to the Governor. This sinking fund provision would, within the period which the bonds had to run, place in the treasury of the State an amount sufficient to nearly or quite enable the State to pay the bonds. The Tennessee bonds were generally six per cent., and funded in those the time required would be thirty-three years and two months.

There is nothing in the act to indicate that after the company has complied with these provisions as to interest and sinking fund, and has thus provided the State with the means of payment, that the company was also required to pay to the bondholders. Certainly this was not the condition of the security, as the only way in which a default could occur was by failure of the company to provide for payment of the interest and principal in those specified ways.

But it is said the Sinking Fund was not to be commenced until five years after the particular road should be completed, and that that event might not take place at all or not till half or more of the time which the bonds had to run had expired, so that the period might be wholly inadequate in which to provide a sufficient Sinking Fund for paying the bonds when due, and that this indicates that the lien was not intended as security merely for payment by the company to the State by means of a Sinking Fund in the manner provided. A statute must be construed from the standpoint, the circumstances and surroundings of the lawmakers when

it was enacted; and it would be unjust and repugnant to reason and common experience to assume that the Legislature passed the act in the expectation that the roads would never be finished or would not be completed within a reasonable time. Besides section twelve reserved to the State ample powers to make such modifications in relation to the time for the Sinking Fund to commence and the per cent. annually to be paid into that fund as would fully protect the interests of the State against delay on the part of the railroad company.

Whatever might be said in regard to the evidence, adduced in these cases, of contemporaneous construction through the utterances of State officials in public documents, the action of any department of the State government or otherwise, there is, in the judgment of the court, nothing to change the views which have been expressed.

Chamberlain *v.* St. Paul and Sioux City R. R. Co., 92 U. S., 299, was decided upon a statute and upon facts similar to those in the present cases and is very instructive. The State of Minnesota by a constitutional amendment provided for an issue of its bonds as a loan to the Southern Minnesota Railroad Company, and required such company to convey the lands in question "in trust for the better security of the Treasury of the State from loss on said bonds," and further provided that if the borrowing company should make default in payment of either the principal or interest of the bonds issued by the State, the Governor should proceed to sell the lands held in trust by the State. The company accordingly executed a trust conveyance of the lands to the State, conditioned for the payment of the principal and interest of the bonds issued to that company. The company made default in the payment of interest. The State foreclosed and became the purchaser of the lands which she granted to another corporation, the de-

fendant in the Chamberlain suit. Chamberlain was holder of some of the State bonds, the payment of which was secured by the trust conveyance, and sought to have a lien upon the land declared in his favor.

In the cases at bar, as in that case, the State was primarily liable to the holder of the bonds. In the cases at bar, as in that case, the State reserved to itself the right of foreclosure and disposition of the property. In deciding that case, Justice Field after stating the position of the complainant, viz.: "that the interest which the State took under the trust deed and mortgage was only the right to hold them as security against loss upon its bonds, * * * that this interest was not changed by foreclosure of the mortgage and by purchase of the property by the State," uses the following language:

"The State was primarily liable to the bondholders; and it was only between her and the company that the relation of principal and surety existed.

It may be doubted whether the bondholders could call upon the company in any event. The endorsement made by the President simply transferred the bonds; it was not the act of the company. Be that as it may, whatever right the plaintiff had to compel the application of the lands received by the State to the payment of the bonds held by him, it was one resting in equity only. It was not a legal right arising out of any positive law or any agreement of the parties. It did not create any lien which attached to and followed the property. It was a right to be enforced if at all only by a Court of Chancery against the surety. But the State being the surety here, it could not be enforced at all, and, not being a specific lien upon the property, cannot be enforced against the State grantees."

This was said to be the law of that case, even if the bondholders could have called upon the company for payment. But laying this feature aside, the analogies are as before stated, and whatever right the plaintiffs

have to claim benefit from the security rests here as in that case as a mere equity; there was no legal right because the law did not impose one, and the company made no promise to the bondholders. Such equity created no lien which followed the property; the liability of the State was to the bondholder. She held no relation as surety to him; as in the Chamberlain case, it was only as between her and the company that in any possible view the State could be regarded as surety, and this view would make it necessary to treat the company as the principal debtor to the bondholder, whereas the company was not the principal debtor, nor indeed a debtor to the bondholder in any degree.

The reasoning in the case of Hand *v.* R. R. Co., in the Supreme Court of South Carolina—manuscript—referred to on the argument, cannot all be adopted as applicable to these cases if the conclusions might be.

It is not upon its fact authority. The railrond company made its own bonds and the State guaranteed their payment to the holder by endorsement. The State was secured by a lien upon the company's road, reserved by the statute which authorized the guarantee. As a surety the State assumed contract obligations to the creditor—the bondholder. If a creditor has a right to claim the benefit of security given by the debtor to his surety for the latter's indemnity, it does not follow that the right exists where the principal debtor takes the security from the accommodatee and where the security holder holds no other relation to the creditor than that of debtor, and the giver of the security is neither a debtor or surety to the creditor.

It becomes unnecessary to further consider the effect of the reservation of power to the State under section twelve. The court has already stated that such re-

served power is ample to authorize a modification of the sinking fund provisions, as has been done by increasing the amount to be paid annually into the Sinking Fund, and changing the time for such payment to commence.

It follows that by this judgment neither the foreclosed or the non-foreclosed roads are subject to any lien in favor of the holders of internal improvement bonds issued by the State of Tennessee, under the acts passed by that State, and to which reference has been made.

Other topics presented in the arguments need not be considered.

A decree will be entered in each case, dismissing the bill of complaint therein, with costs to defendants, and it is directed that such decrees be drawn and presented for approval.

1

Decree.

U. S. CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

[*In Equity.*] 2

CALVIN AMORY STEVENS and JOHN T. TERRY, on behalf of the Holders of Internal Improvement Bonds of TENNESSEE issued to the WINCHESTER and ALABAMA RAILROAD COMPANY, 3

vs.

THE WINCHESTER AND ALABAMA RAILROAD COMPANY and THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILROAD COMPANY.

This cause having come on for a final hearing upon the pleadings and proofs therein, was 4 argued by counsel, and thereupon the Court, being fully advised thereon, finds the equity of the case to be with the defendants, and that the complainants are not entitled to the relief prayed for. It is

5 therefore ordered, adjudged and decreed that the bill of complaint of the complainants be be and the same is hereby dismissed, and that the complainants pay to the defendants the costs of this suit, to be taxed, and the defendants have execution therefor. And thereupon came the complainants at the same time, and prayed an appeal from the foregoing decree, which appeal is allowed, and the amount of the penalty of the bond to be given by them is fixed at one thou-
6 sand dollars.

Settled and approved this 30th day of October, A. D. 1880.

(Signed) S. L. WITHEY,
Dist. Judge,
West Dist. Mich.

7

8

Supersedeas Bond. 1

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE,

2

CALVIN AMORY STEVENS and JOHN T. TERRY, on behalf of the holders of internal improvement bonds of Tennessee, issued to the WINCHESTER AND ALABAMA RAILROAD COMPANY,

vs.

THE WINCHESTER AND ALABAMA RAILROAD COMPANY and the NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILROAD COMPANY.

} In Equity.

3

Know all men by these presents, that we, Calvin Amory Stevens and John T. Terry, resident of the city and State of New York, and Eugene Kelly, Peter Geddes, Eugene Plunkett and Solon Humphreys, residents of the same place, are jointly and 4
severally held and firmly bound unto the Winchester and Alabama Railroad Company and the Nashville, Chattanooga and St. Louis Railway Company,

in the sum of one thousand dollars each, to be paid to the said The Winchester and Alabama Railroad Company and the Nashville, Chattanooga and St. Louis Railway Company and their successors, for which payments well and truly to be made, each of us doth hereby bind himself, his heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the 29th day of December, in the year of our Lord one thousand eight hundred and eighty.

Whereas, lately at a regular term of the Circuit Court of the United States in and for the Middle District of Tennessee, held by consent of all parties to the record, at the City of Nashville in said State, a final decree was rendered in the above-entitled cause, dismissing the complainant's bill out of the said Court.

And whereas an appeal from said decree to the Supreme Court of the United States was prayed on behalf of complainants in said suit, namely: Calvin Amory Stevens and John T. Terry, which appeal was granted, and the order granting the same was filed with the clerk of said Circuit Court.

Now the condition of the above obligation is such that if the said Calvin Amory Stevens and John T. Terry shall prosecute the said plea to effect, and answer all damages and costs if they fail to make the said appeal good, then the above obligation to be void, else to remain in full force and virtue.

CALVIN AMORY STEVENS, [L. S.]
EUGENE KELLY, [L. S.]
P. GEDDES, [L. S.]
JOHN T. TERRY, [L. S.]
EUGENE PLUNKETT, [L. S.]
SOLON HUMPHREYS. [L. S.]

UNITED STATES OF AMERICA,
Southern District of New York. } ss:

On this 29th day of December, 1880, before me personally appeared Calvin Amory Stevens, Eugene Kelly Peter Geddes, John T. Terry, Eugene Plunkett and Solon Humphreys, to me known and known to be the same persons described in and who executed the foregoing bond, and severally acknowledged to me that they executed the same.

[L.S.] WILLIAM H. DELANCEY,
Notary Public,
Westchester and N. Y. Cos.

UNITED STATES OF AMERICA,
Southern District of New York. } ss:

CALVIN AMORY STEVENS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

CALVIN AMORY STEVENS.

Sworn to before me, this 29th day of December, 1880.

[L.S.] WILLIAM H. DELANCEY,
Notary Public,
Westchester and N. Y. Cos.

13 UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

EUGENE KELLY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE KELLY.

14 Sworn to before me, this 29th day of December, 1880.

[L.S.] WILLIAM H. DELANCEY,
Notary Public,
Westchester and N. Y. Cos.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

PETER GEDDES, being duly sworn and examined,
15 deposes and says: I am one of the bondsmen named in the foregoing bond, and am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

P. GEDDES.

Sworn to before me, this 29th day of December, 1880.

[L.S.] WILLIAM H. DELANCEY,
16 *Notary Public,*
Westchester and N. Y. Cos.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

JOHN T. TERRY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the

sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

JOHN T. TERRY.

Sworn to before me, this 29th day of December, 1880.

[L.S.] WILLIAM H. DELANCEY,
Notary Public,
Westchester and N. Y. Cos.

UNITED STATES OF AMERICA, *Southern District of New York*, } ss:

EUGENE PLUNKETT, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE PLUNKETT.

Sworn to before me, this 29th day of December, 1880.

[L.S.] WILLIAM H. DELANCEY,
Notary Public,
Westchester and N. Y. Cos.

UNITED STATES OF AMERICA, *Southern District of New York*, } ss.:

SOLON HUMPHREYS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities, and property exempt by law from execution.

SOLON HUMPHREYS.

Sworn to before me, this 29th day of December, 1880.

WILLIAM H. DELANCEY,
[L. S.] *Notary Public*,
Westchester and N. Y. Co.

21 UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

WILLIAM H. FARRELL, being duly sworn, deposes and says: I am well acquainted with Eugene Plunkett, one of the sureties named in the foregoing bond, and know of my own knowledge that he is worth the sum of two thousand dollars over and above all his debts and liabilities and property exempt by law from execution.

WM. H. FARRELL.

22 Sworn to before me this 30th day of December, 1880.

WILLIAM H. DELANCEY,
[L.S.] *Notary Public,*
Westchester and N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

S. NEWTON SMITH, being duly sworn, deposes and says: I am well acquainted with Solon Humphreys, one of the sureties named in the foregoing bond, and know of my own knowledge that he is worth the sum of two thousand dollars over and above all his debts and liabilities and property exempt by law from execution.

S. NEWTON SMITH.

Sworn to before me, this 30th day of December, 1880.

WILLIAM H. DELANCEY,
[L.S.] *Notary Public,*
24 Westchester and N. Y. Cos.

By the Honorable JOHN BAXTER, United States Judge in and for the Sixth Judicial Circuit, Middle District of Tennessee:

I hereby approve the foregoing bond as to the form and manner of its execution, and as to the amount thereof, and the sufficiency of the sureties, and direct that the same shall operate as a supersedeas.

Dated January 6th, 1881.

JNO. BAXTER,
United States Judge.

CIRCUIT COURT OF THE UNITED STATES,

MIDDLE DISTRICT OT TENNESSEE.

C. Amory Stevens vs. *The Nashville, Chattanooga and St. Louis Railway Co. et al.*

Same vs. *The Nashville & Northwestern Railroad Company et al.*

Same vs. *The McMinnville & Manchester Railroad Company et al.*

Same vs. *The Winchester and Alabama Railroad Company et al.*

It is agreed that the following described testimony, so far as relevant and competent, shall be considered as read in each of the foregoing cases, printed copies to be furnished by either of us to the clerk when he makes up the record, as part thereof:

FOR THE COMPLAINANT.

1. Printed stipulation signed E. L. Andrews and Ed. Baxter, as heretofore filed in these causes.

2. Printed stipulation signed by George Hoadly and Stanley Matthews.

3. Printed compilation made up by complainant.

4. Record of proceedings, Davidson County Court, printed.

5. Certificate of cash in State Treasury, printed.

6. Printed statement of prices of State bonds, after January 1, 1870, contained in stipulation of Evarts, Southmayd & Choate, and E. L. Andrews.

7. Depositions of C. Emory Stevens, three in number; also of Eugene Kelly, John T. Terry, George Arents, Ed. Baxter, Wm. H. Osborn, Dempsey Weaver and Albert S. Marks.

8. Two depositions of Richard T. Wilson.

9. Printed copy, order of E. M. Stanton, secretary of War, dated August 8, 1865.

10. Report (printed copy) Judiciary Committee, W. H. Wisener, Chairman, February 19, 1869, and copy of Senate and House Journal, relative to the bill referred to in said report.

11. Act of February 9, 1850, sections 1 to 3 inclusive.

FOR THE RESPONDENTS.

Nos. 1 and 2 as above, being the two printed stipulations above referred to.

3. Printed compilation made up by respondents.

4. Printed record of foreclosure in the Chancery Court at Nashville, of a cause entitled the State *vs.* The Edgefield and Kentucky Railroad Company *et als.*, and only so much thereof as relates to the above respondent, and is filed with their respective answers, all objections on account of its being an incomplete record being waived.

5. Pages 128 to 177, both inclusive, of the printed report of James L. Gaines, Comptroller of the State of Tennessee, to the Forty-first General Assembly of the State of Tennessee, made January 6, 1879.

6. Printed depositions of John C. Brown, Maney Bell, Samuel R. Cruse, John S. Claybrooke, R. C. Jackson, John J. Craig, Campbell Wallace, Neil S. Brown, Columbus Powell, Albert Roberts, D. B. Cliffe, J. W. Drexel, V. K. Stevenson, J. G. M. Ramsey, B. O. White, John M. Fleming, Ira P. Jones, Peter Geddes, J. D. Porter, M. T. Polk and James L. Gaines. The last three were taken by Hon. James Fentress.

The foregoing depositions are such as have been taken in various cases brought by the complainant against the foregoing and other railroad companies in Tennessee.

Also, all depositions and other documentary testimony heretofore filed in the cases named in the caption of this agreement.

While it is agreed that the foregoing depositions and documents may be filed in these cases, it is expressly understood that to make them, or either of them, or any part of either of them, competent in these cases, the testimony must be competent and relevant in these particular cases, and that no special exceptions need be taken to point out irrelevant and incompetent testimony, but its admissibility may be pointed out and relied upon in argument or brief, both in the Circuit and Supreme Court.

It is also expressly understood that where any fact is agreed upon in the stipulation signed by Andrews and Baxter, or in the stipulation signed by Matthews and Hoadly, referred to above, it shall not be affected by anything contained in the depo-

documentary proof agreed to be
pulation.

agreed that the record of the exhib-
ny aforesaid shall be made up by
any one of those causes, and that the
be treated, regarded and considered as
of the exhibits and testimony in each
of the said causes, and that upon appeal to
upreme Court of the United States a single
cript of the record of said exhibits and testi-
y so made up may be filed as the record of said
ibits and testimony in each and all of said
ses, without filing or docketing any other rec-
d except the proper record in each cause so ap-
pealed of the pleadings, process, orders and
decrees and action and testimony therein other
than that contained in said record of said exhibits
and testimony.

EAST & FOGG,
Sol. for Defendants.
GEO. HOADLEY,
Solicitor for Complainants.